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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 310. 71.

THE UNITED STATES, APPELLANT,

vs.

EUGENE BEEBE, WILLIAM A. HENSHAW, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED MAY 22, 1900.
(17424.)

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a UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1898, and held in the court room of said court in the city of New Orleans.

Before the honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, the honorable Charles Swayne, United States district judge for the northern district of Florida, and the honorable Charles Parlange, United States district judge for the eastern district of Louisiana.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
EUGENE BEEBE ET ALS., APPELLEES.

Be it remembered that heretofore, to wit, on the 20th day of September, 1897, a transcript of the record of the above-styled cause from the circuit court of the United States for the middle district of Alabama was filed in the office of the clerk of said United States circuit court of appeals, in the words and figures following, to wit:

1 TRANSCRIPT OF RECORD.

United States circuit court of appeals, fifth circuit.

THE UNITED STATES OF AMERICA, APPELLANTS,
vs.
EUGENE BEEBE ET ALS., APPELLEES. } No. .

Appeal from the circuit court of the United States for the middle district of Alabama.

Filed , 1897. May term, A. D. 1897.

At a circuit court of the United Scates for the middle district of Alabama, in the fifth judicial circuit, begun and held at Montgomery, Alabama, on the first Monday in May, it being the 3rd day of said month, in the year of our Lord one thousand eight hundred and ninety-seven.

Present and presiding: The honorable John Bruce, judge of the
2 district courts of the United States for the middle and northern districts of Alabama, sitting as circuit judge, Saturday, May 29th, 1897, a day of said term, the following proceedings were had:

THE UNITED STATES OF AMERICA } No. 122. In equity. Original bill.
vs.
EUGENE BEEBE ET ALS.

In the circuit court of the United States for the middle district of Alabama, fifth circuit.

To the honorable the justices and the judges of the circuit court of the United States in and for the middle district of Alabama, in the fifth judicial circuit, sitting in equity:

The United States of America, by its Attorney-General, brings this, its bill of complaint, against Eugene Beebe, of Montgomery, Alabama, a resi-

dent citizen of said middle district of Alabama; and against William A. Henshaw and Christiana Henshaw, his wife; Cornelia H. Henshaw, widow of the late Gilbert F. Henshaw, brother of Ferrie Henshaw, hereinafter mentioned, residing in Brooklyn, New York; Samuel W. Henshaw and Mary S. Henshaw, his wife; Sarah R. Buxton; George A. Henshaw and Zuriah E. Henshaw, his wife; Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, Dasie B. Henshaw, children of said late Gilbert F. Henshaw and his heirs at law, all of whom are citizens of the State of New York; Catherine I. Ferris, a resident of Montclair, New Jersey, who is a citizen of the State of New Jersey; and against the heirs at law of Gilbert I. Henshaw, a son of said late Gilbert F. Henshaw, who died after the death of his father, minors, whose names
3 are not now known to orator, but prayed to be inserted in their appropriate places in this bill when ascertained, who are citizens of the State of New York; all of said Beebe, being the heirs at law of Ferris Henshaw, deceased, lately residing at Montgomery, State of Alabama, and a citizen of said middle district of Alabama; and against the Montgomery Light Company, the Montgomery Land and Improvement Company, and the Freidman Vinegar and Cider Works, corporations, respectively, created by and existing under the laws of the State of Alabama, and citizens of said middle district of Alabama; and against Abbie F. Rice, wife of W. P. Rice, of Fort Payne, Alabama, and a citizen of the State and northern district of Alabama; and against the Southern Oil Company, a corporation created by and existing under the laws of the State of New Jersey, but residing, doing business, and having an agent duly authorized in said middle district of Alabama; and against the Cleveland Cider Company, firm or partnership composed of Edwin R. Cleveland and Arthur B. Cleveland, citizens of the State of Ohio; all of said defendants, except the heirs of said Gilbert I. Henshaw, being of lawful age; and thereupon orator complains and says:

(1) That on the 2nd day of June, A. D. 1873, said Eugene Beebe and Ferris Henshaw became and were sureties on the official bond of Francis Widmer, collector of internal revenue of the second district of Alabama, in the full and just sum of fifty thousand dollars, money of the United States, which bond was duly approved on the ninth day of June, A. D. 1873, conditioned that the said Francis Widmer, as such collector as aforesaid, should faithfully perform the duties of his said office, according to the provisions of existing law, and of laws thereafter enacted,
4 and should justly and faithfully account for and pay over to the United States, in compliance with the orders and regulations of the Secretary of the Treasury, all public moneys which might come into his hands or possession, and that each and every deputy collector appointed by said collector should truly and faithfully execute and discharge all duties of such deputy collector according to law.

(2) That said Widmer, as such collector, did not faithfully perform the duties of his said office according to law, and did not justly and faithfully account for and pay over to the United States, in compliance with the orders and regulations of the Secretary of the Treasury, all public moneys that came into his hands or possession, and each and every deputy collector appointed by him did not faithfully execute and discharge all the duties of such deputy collector according to law; but that he wholly failed and refused to account for and pay over to the United States the

sum of twenty-eight thousand one hundred and fifty-eight dollars and fifty-six cents ($28,158.56), public moneys that had come into his hands and possession as such collector, which said sum is still due and unpaid to the United States, together with interest thereon from January 1st, A. D. 1874.

(3) That said Eugene Bebee and said Ferrie Henshaw were, and for many years had been, partners in business, and were joint owners in fee simple of the following described property situated in the county of Montgomery and State Alabama, and in said middle district of Alabam', to-wit:

The lot and storehouse thereon known and described as No. 28 Dexter avenue, formerly No. 28 Market street, sometimes called the "Rialto," in the city of Montgomery, Alabama.

5 All that certain lot of ground commencing at a point on the west side of North Perry street, formerly Perry street, one hundred and twenty-nine feet north from the northwest corner of Dexter avenue, formerly Market street, and North Perry street, formerly Perry street, and running north along said North Perry street eighteen (18) feet, and running back and west one hundred feet, fronting on said North Perry street, making a lot eighteen by one hundred feet (18x100), together with a building thereon, known as Brock's Store, formerly known as "Washington Hall," and also formerly known as "Cashin's," said premises also being known as number eleven (11) North Perry street, being the same premises formerly known as number eleven (11) Perry street, in the city of Montgomery, Alabama.

The lot or parcel of land bounded by a line commencing at a point on South Perry street, thirty-five feet north of the northwest corner of South Perry street and Washington street, and running north on a line with the west side of South Perry street twenty-five feet, thence west one hundred feet, thence south twenty-five feet, and thence east one hundred feet to the point of beginning, being in the block bounded north by Dexter avenue, formerly Market street, south by Washington street, east by South Perry street, formerly Perry street, and west by South Court street, formerly Court street, said lot being also known and described as number twenty-two (22) South Perry street, and being the same premises heretofore known as number sixteen (16) Perry street, in the city of Montgomery, Alabama.

The west half (w½) of lot number eleven (11) on the north side of the street formerly known as Market street, and now known as Dex-

6 ter avenue, between North Perry and North Lawrence streets, together with all the improvements and appurtenances thereon and thereunto belonging, including the privilege of the use of the alley way in the rear thereof, said lot measuring twenty-five (25) feet front on said Dexter avenue, formerly known as Market street, and running back about one hundred and sixty feet, more or less, to the said alley way, said premises being also known as number one hundred and nine (109) Dexter avenue, and being the same premises formerly known as number forty-one (41) Market street, in the city of Montgomery, Alabama.

All that certain tract of land commencing at a point 3,960 feet, more or less, north of the east and west line between sections one and twelve, township sixteen, north, range seventeen, east, and 605.3 feet, more or

less, west of a point in the center of the Western Railway track, where it is crossed by the public road, which is a continuation of Court street, Montgomery, on the road or street leading from the Western Railway track into the "Fair" or "Exposition" grounds, on the land of the Montgomery Land and Improvement Company, and running along and on said road or street, west 1,980 feet, thence turning an angle of 79 deg. 14 min. to the right, or north, 361 feet, thence 17 deg. 4 min. to the right, 963 feet, thence 5 deg. 23 min. to the left, 1,340 feet, to a point near the east and west line between the north and south halves of the southeast quarter of section thirty-six, township seventeen, north, range seventeen, east, thence at a right angle east, 1,330 feet, more or less, thence south 1,318 feet, thence east along the line between said section thirty-six and said section one, 950 feet, thence in a southerly direction, 1,330 feet, more or less, to the place of beginning,
7 being the same premises heretofore known as "The Montgomery Race Track," and which was enclosed by a fence, said lands lying and being situated in the northeast quarter of section one, township sixteen, north, range seventeen, east, and in the southeast quarter of section thirty-six, township seventeen, north, range seventeen, east, all near the city of Montgomery, in the county of Montgomery, and State of Alabama.

That said Ferrie Henshaw died, in Montgomery, Alabama, intestate, April 19th, 1879, leaving as heirs-at-law the aforesaid William Henshaw, Gilbert F. Henshaw, Samuel W. Henshaw, Sarah R. Buxton, George A. Henshaw and Catherine I. Ferris; that said Gilbert F. Henshaw died, leaving as heirs-at-law Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, Daise B. Henshaw, and Gilbert I. Henshaw, his children; also leaving a widow, Cornelia H. Henshaw, all of whom are of full age; that said Gilbert I. Henshaw died, after the death of his father, leaving minor heirs whose names are unknown to Orator but will be inserted by leave of this Honorable Court, when ascertained; and that the said Eugene Beebe, and said Ferrie Henshaw, and the estate of said Ferrie Henshaw, are at the date of the filing of this bill, and have been uninterruptedly since and prior to the year 1873, owners of all of said property hereinabove described, which is of the value of fifty thousand dollars.

(4) That on the thirteenth day of June, 1879, following the appropriate action in said court thereof, William T. Hatchett, a citizen of said Middle District of Alabama, was, by the probate court of Montgomery County, Alabama, in which county said Henshaw died, and said property was and is situated, duly appointed administrator of the estate of
8 said Ferrie Henshaw; that on the 17th day of April, A. D. 1880, said Hatchett, as such administrator, represented and reported to said probate court that said estate was insolvent; filed with his said report a full statement of all the personal and real estate which had come to his knowledge; and the claims against said estate, which said claims aggregated fifty-four thousand nine hundred and thirty-two dollars and fifty cents ($54,932.50) including the said indebtedness to the United States on account of said Henshaw's suretyship upon the bond of said Widmer, stated in said report at fifty thousand dollars ($50,000.00), and he prayed that said estate be declared insolvent; that on

the second day of July, A. D. 1880, said estate was, by said probate court of Montgomery County, declared insolvent. A copy of said proceedings in said probate court is hereby attached, as "Exhibit A," and made a part of this bill, with leave to refer thereto as may be necessary; that said administrator was, on the ninth day of December, A. D. 1882, removed, and William Bellinger was, on the same day, in his capacity as sheriff of said county of Montgomery, appointed administrator of said estate, in place of said Hatchett; that said Bellinger, on the 28th day of November, 1883, tendered his resignation as said administrator of said estate, and the same was, on said day, accepted by said probate court; and that, to the date of the filing of this bill, no further or any administration of said estate has been had; that no settlement in said probate court, either partial, annual or final, has been made by any administrator of said estate, and the said estate of said Ferrie Henshaw remains unsettled and undetermined; and that the personal assets were, and are, insufficient to pay the debts of said estate.

9 (5) That said Eugene Beebe, at, before, and since the said second day of July, 1880, has ever been, and has declared himself to be, insolvent and without sufficient property to pay his debts, including his indebtedness to the United States; and that the said Ferris Henshaw was also insolvent and without sufficient property to pay his debts, including his said indebtedness to the United States.

(6) Orator further states, avers, and charges that by reason of the premises and of the insolvency of said Eugene Beebe and said Ferrie Henshaw, and the estate of said Ferrie Henshaw, orator became and was, and is, entitled to priority of payment over any and all other creditors of said Beebe and Henshaw, and of their and each of their property and estate, of the full amount collected, withheld, appropriated, and due, as aforesaid, by the said Widmer, collector, from and to the United States.

(7) Orator further states, avers, and charges that on the 3rd day of June, A. D. 1880, separate suits at law were duly commenced in the circuit court of the United States for the middle district of Alabama against said Eugene Beebe and against William T. Hatchett, administrator of the estate of said Ferrie Henshaw, for the recovery of the sum or sums for which said Widmer, collector as aforesaid, was in default; the said suits were continued from time to time, at the request and instance of the said defendants, until February 6th, 1885, when judgments were severally entered in said court against said Beebe, and against said Hatchett as administrator of said Henshaw, for one hundred dollars and costs; that said Bebee, on the first day of July, 1886,

10 paid into the Treasury of the United States the sum of one hundred and nine dollars and eighty-five cents ($109.85) as the amount of the judgment and costs rendered as aforesaid against him; but the said judgment against said Hatchett as administrator of the estate of said Henshaw remains, to the date of the filing of this bill, wholly unsatisfied, and is due and unpaid to the United States. That said judgments were entered under the following circumstances: That said defendants came into court, and stated and represented in open court, and they caused to be stated and represented for them, that said Beebe and said Ferrie Henshaw were poor men, and that said Beebe

and the estate of said Ferrie Henshaw were without property out of which the said judgments could be paid and collected; that no part of said judgments could be collected by due process of law; that nothing could be made out of them, or either of them, or their estates, by execution, but that if the court would allow a jury and verdict to be entered against them for one hundred dollars they, and each of them, would pay said judgments and costs; that no evidence or proof was or had been introduced in said causes, or either of them, and indebtedness of said Beebe and Henshaw to the United States then being twenty-eight thousand one hundred and fifty-eight dollars and fifty-six cents ($28,158.56), and interest, or other large sum; and the statements and representations aforesaid only were before the said circuit court at the time of the entry of said judgments; and no hearing or determination upon the law or the facts involved in said cases was ever had in said court; whereupon the court remarked that unless the district attorney of the United States objected, the causes might be disposed of as suggested aforesaid; said district attorney did not object, and said judgments for one hundred dollars and costs were entered in each of

11 said causes. And orator avers and charges that said statements and representations made as aforesaid by and on behalf of, and for, said Beebe and said Ferrie Henshaw, and the estate of said Ferrie Henshaw, were wholly untrue, and were made to deceive said court and United States attorney, and for the purpose and with the intent to defraud the United States. Orator further avers and charges that said court and United States attorney had no authority in law to accept said statements and representations, which were not made under oath nor in the course of any judicial proceeding, and were not, and were not supported nor verified by, evidence or proofs; and that said acts of said court and United States attorney amounted in law and in fact to, and was, and was intended to be, a mere naked compromise of the claim and demand of the United States against said Eugene Beebe and Ferrie Henshaw, and the estate of said Ferrie Henshaw, which said court and the United States attorney had no authority, but were inhibited by law, to make, entertain, and consummate; that said court was without jurisdiction and power to determine said causes in the manner aforesaid; and that said alleged judgments for one hundred dollars and costs are null and void ab initio, and of no effect, and should be vacated and held for naught in this court of equity.

(8) Orator further states, avers, and charges that the appointment of an administrator ad litem of the estate of said Ferrie Henshaw, to represent said estate in this proceeding, is necessary and proper; and that an administrator ad litem is likewise necessary to represent each of the estates of said Gilbert F. Henshaw and said Gilbert I. Henshaw, in this proceeding, each and all of said estates being without acting administrators within the State of Alabama.

12 (9) Orator is informed and believes, and upon such information and belief states, that the Montgomery Light Company, the Montgomery Land and Improvement Company, the Friedman Vinegar and Cider Works, corporations respectively created by and existing under the laws of the State of Alabama, and citizens of said middle district of Alabama, and the Southern Cotton Oil Company, a corpora-

tion created by and existing under the laws of New Jersey, and a citizen of the State of New Jersey, and the Cleveland Cider Company, a firm or partnership composed of Arthur B. Cleveland and Edwin R. Cleveland, and a citizen of the State of Ohio, and Abbie F. Rice, a citizen of the northern district of Alabama, assert some claim against certain of said property, the precise nature and extent of which is unknown to orator; but orator charges that such claims, each and all, are subordinate to orator's right to condemn and subject said property to the satisfaction of the indebtedness by reason of the default of said Widmer as collector, hereinbefore set out and described; and orator further avers and charges that if either of the persons and corporations mentioned in this paragraph of the bill claim under and by virtue of any conveyance from said Beebe, or said Ferrie Henshaw, or the heirs of said Henshaw, that such conveyances were, and are, each and all, without warrant and authority in law, and were, and are, null and void, and should be vacated, set aside, and held for naught. Orator demands a full discovery of the particulars and character of such, and each of such, claims, together with all contracts, deeds, powers, and other writings, of whatsoever nature, upon which such or any claims are based in whole or in part, as if specially interrogated thereto.

13 (10) Orator states, avers, and charges that the facts and circumstances set out herein as the basis of the relief asked for in this bill have only recently come to orator's knowledge, to-wit, on or about March 5th, 1890.

(11) Orator further avers and charges that on March 22d, 1877, said Eugene Beebe conveyed by deed to said Ferrie Henshaw, then his partner in business, all his (Beebe's) interest and estate in the property described in this bill, together with certain other property therein described, the same constituting all the real and personal property then owned and possessed by said Beebe, for the alleged purpose of securing certain pretended liabilities of said Eugene Beebe to said Ferrie Henshaw, and to protect and secure real or pretended creditors of said firm, composed of said Beebe and said Ferrie Henshaw, and to enable said Ferrie Henshaw more easily and readily to pay and settle the debts of said firm, and to protect and secure said Henshaw for all moneys said Beebe might owe said firm or said Ferrie Henshaw, on a settlement between them of the affairs and business of said firm; that said deed contained a provision that if any of said property not required to be sold for the purposes aforesaid should remain in the hands of said Henshaw, then, on such final settlement between them, he should reconvey the same to said Beebe, his heirs or assigns. A copy of said deed is hereto as "Exhibit B," and made part of this bill, with leave to refer thereto as may be necessary. And orator, upon information and belief, avers and charges that said deed from said Beebe to said Ferrie Henshaw was without consideration, and fraudulently made to hinder, delay, and defraud the existing creditors of said Beebe, and void; and further, that

14 all the property described in this bill remained in the hands of said Henshaw; that none of it has been required, to be sold for the purposes recited in said deed; and that a final settlement has been had of all matters of account and difference between said Beebe and said

Ferrie Henshaw, whereby said Ferrie Henshaw became, and his administrator was and is, bound, and should be required, to reconvey said property to said Beebe, free of encumbrance or charge, as of the date of said conveyance to said Ferrie Henshaw, of March 22d, 1877; but should orator be mistaken in this, then he avers and charges that said property so conveyed by said Beebe to said Ferrie Henshaw became and is answerable, in the hands of said Ferrie Henshaw, his administrators and heirs, for said debts so due to the United States by said Eugene Beebe by reason of the default of said Francis Widmer, collector as aforesaid, or for so much thereof as may remain due and unpaid.

In consideration whereof, and forasmuch as orator is remediless according to the strict rules of the common law and can only have relief in a court of equity, the premises considered, orator prays that writs of subpœna may issue out of this honorable court, directed to the defendants who are named in the introductory part of this bill, to the said Eugene Beebe, William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Catherine I. Ferris, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, Dasie B. Henshaw, and the heirs at law of Gilbert I. Henshaw, deceased, and to the Montgomery Light Company, the Montgomery Land and Improvement Company, the Friedman Vinegar and Cider Company, and Abbie F. Rice, and to the
15 Southern Cotton Oil Company and the Cleveland Cider Company, and that publication, by advertisement in the Montgomery Daily Advertiser and in the New York Daily Tribune, as to said nonresident defendants for the time and in the manner required by law, be made, commanding and requiring them and each of them to demur, plead to, or answer this bill within the time limited by law and the rules of this honorable court; that the said judgments for one hundred dollars each, in favor of the United States and against said Beebe and said Henshaw's administrator, be set aside, vacated, and held for naught; that the administration of the estate of said Ferrie Henshaw be removed into and settled by this honorable court; that administrators ad litem be appointed for the estate of said Ferrie Henshaw and the estate of said Gilbert F. Henshaw and the estate of said Gilbert I. Henshaw; that an account shall be stated between the parties, and that a suitable and discreet person, learned in the law and familiar with accounts, shall be appointed master in this case, to whom it shall be referred to ascertain and report the amount due to the United States on account of the liability of said Beebe and Henshaw on the bond of said Francis Widmer, collector as aforesaid, and each and both of them, and to ascertain and report upon the claims, liens, or encumbrances, if any, upon any and all of said property, and that on the coming in of said report the said amount found due to the United States may be held to be a first and prior lien and charge on the property described in this bill; that all conveyances and assignments of said property in conflict with the right and title of the United States in the premises shall be set aside and held for naught; that said property shall
16 be sold by said master for the payment of said indebtedness found due to the United States, as aforesaid, free of all encumbrances whatsoever; that the proceeds of said sale or sales shall be brought into

said court and, so far as necessary, be applied to satisfy and discharge said indebtedness, and the remainder, if any shall be, shall be paid over to the persons found by the judgment and decree of this honorable court to be entitled thereto; that a suitable person shall be appointed as receiver to take possession, charge, and control of all said property, to collect and receive the rents therefor, and to safely keep, preserve, protect, and have all said property or the proceeds of the sale thereof to await and abide the result of this litigation and then be delivered or paid over to the parties who shall appear to be entitled thereto by the decree of this honorable court; that pending this litigation proper writs of injunction be issued out of this honorable court to said Eugene Beebe, the Montgomery Light Company, the Montgomery Land and Improvement Company, the Friedman Vinegar and Cider Works, the Southern Cotton Oil Company, the Cleveland Cider Company, and also to the other defendants herein above, their agents, attorneys, employees, and servants, enjoining and restraining them and each of them from trespassing on or interfering with or conveying said property or any of it, and that on a final hearing of this cause said injunction may be made perpetual; that on said final hearing orator may be allowed, to be payable out of the funds realized herein, reasonable counsel fees and the necessary costs and expenses incident to this litigation, to be taxed; and also that orator shall
17 have such other and further relief in the premises as the nature of the case may require and to this honorable court shall seem meet.

THE UNITED STATES OF AMERICA,
by W. H. H. MILLER,
Attorney-General of the United States.

L. E. PARSONS, Jr.,
United States Attorney for said District,
Solicitors for Complainant, of counsel.

NOTE.—Each of the defendants is required to answer each and every paragraph of the bill, but answer under oath is hereby waived.

W. H. H. MILLER,
Attorney-General United States.
L. E. PARSONS,
U. S. Att'y, Solicitors for Complainant.

EXHIBIT A.

Henshaw, Ferrie, deceased. July 2, A. D. 1880.

REPORT OF INSOLVENCY.

THE STATE OF ALABAMA,
Montgomery County Probate Court:

The undersigned, Wm. T. Hatchett, administrator of the estate of Ferrie Henshaw, respectfully represents and reports to your honor that the property of the said estate, according to the best of his knowledge and belief, is insolvent, and the undersigned herewith files the three following statements, to wit: The first, marked "Statement A," which contains a full statement of all the goods and chattels, evidence of debt, and other per-

sonal property, with the estimated value of each and the amount
18 of money belonging to said estate. The second, marked "Statement B," which is a full statement of the real property of the deceased or of any interest therein, the local situation of such property, and the estimated value thereof. The third marked "Statement C," which is a full statement of the claims against the estate which have come to the knowledge of the undersigned, the character and amount of each claim, and the name and residence of each creditor, so far as known.

STATEMENT A.

There is no property, real or personal, that I have any knowledge of, except the partnership property of Beebe and Henshaw, in the hands of Eugene Beebe, of which he claims control, and which is subject to pay partnership debts before there is anything to be turned into the estate of F. Henshaw, and of the probable value or amount of such estate I am unable to get from Mr. Beebe, or to form an estimate.

STATEMENT B.

The above statement applies in every particular to real property coming under this head.

19 STATEMENT C.

Name of creditor.	Residence of each creditor.	Character of claim.	Amount.
H. C. Davidson	Montgomery, Ala	Burial clothes	$34.00
Moses Clay	do	Digging grave	6.00
Est. H. W. Hitchcock	do	Burial expenses	118.00
Dr. J. F. Johnson	do	Attendance last sickness	20.00
Dr. S. D. Seelye	do	do	18.00
Dr. J. B. Gaston	do	do	230.00
Tatum & Wilkinson	do	a-c	4.00
H. B. Metcalf	do	do	2.50
W. H. Benson	do	Note	4,500.00
Government of the United States	Washington, D. C	Security on bond of S. Widner, suit for.	50,000.00
			54,932.50

And he therefore prays that said estate may be declared insolvent.

W. T. HATCHETT.

THE STATE OF ALABAMA,
Montgomery County Probate Court:

Personally appeared before me, C. W. Buckley, judge of probate, Wm. T. Hatchett, who being sworn, says that the facts stated in the foregoing petition and in the several statements therewith filed are correct and true, to the best of his knowledge, information, and belief.

W. T. HATCHETT.

Sworn to and subscribed before me this 17th day of April, A. D. 1880.

C. W. BUCKLEY,
Judge of Probate.

Filed this 17th day of April, A. D. 1880.

C. W. BUCKLEY,
Judge of Probate.

JULY 2nd, 1880.

20 Henshaw, Ferrie, deceased, estate of.

This being the day to which was regularly continued the hearing of the report and statements for the insolvency of said estate, which said reports and statements were filed in this court by W. T. Hatchett, administrator of said estate, on the 17th day of April, 1880, now comes said administrator and moves the court that said estate be declared insolvent in accordance with said report and statements, and the court being satisfied, from due examination and proof, that notice of the filing of said report and of the day originally set to hear and determine upon the same has been given to the creditors of said estate as required by law, and in all respects as directed by the order of this court entered in the premises on said 17th April, 1880, by publication in the Montgomery Advertiser & Mail, a newspaper published in this county, for four successive weeks, by posting notice on the court-house door for same length of time, and by forwarding notices to all the creditors of said estate whose residences were known, notifying them of the filing of said report of insolvency, and the day appointed by the court for the hearing thereof: thereupon the court proceeded to hear and determine as to said report, & now, none of the creditors of said estate contesting the correctness of said report, it is ordered, adjudged, and decreed by this court that the said estate of Ferrie Henshaw, dec'ased, be, and the same is hereby, declared insolvent. It is further ordered that said Hatchett do file his account, vouchers, and evidences for a final settlement of his administration of said *said* estate, & that the 18th day of August next (1880) be

21 appointed as a day for said administrator to appear and make settlement of his accounts, and that notice of this order and decree & of the time appointed for making said settlement of said administration be given to the creditors of said estate by forwarding to them by mail, postage paid, properly addressed, 30 days before said day of hearing in all cases where the residences are known, & by publication for four successive weeks in the Montgomery Advertiser & Mail, a newspaper published in this county, & by posting on the court-house door for the same length of time; and it is further ordered that said creditors be notified to appear on said day & nominate another administrator, if they see proper.

C. W. BUCKLEY,
Judge of Probate Court.

THE STATE OF ALABAMA, *Montgomery County.* *Probate court.*

I, F. C. Randolph, judge of probate court in and for said county and State, hereby certify that the foregoing pages, numbered from 10 to 12, inclusive, contain a full, true, and exact copy of the proceedings declaring the estate of Ferrie Henshaw insolvent, as fully and completely as the same appears of record in said court.

In witness whereof I have hereunto set my hand, and caused the seal of said probate court to be affixed, at Montgomery, this tenth day of March, A. D. 1890.

F. C. RANDOLPH,
Judge of Probate Court, Montgomery County, Ala.

22 EXHIBIT B.

STATE OF ALABAMA, *Montgomery County.*

EUGENE BEEBE
to
FERRIE HENSHAW. } Deed.

Whereas a copartnership has existed for many years in the city of Montgomery and county and State aforesaid between Eugene Beebe and Ferrie Henshaw, under the name and style of E. Beebe & Co.; and whereas the said firm of E. Beebe & Co. is indebted to various persons, and the said Eugene Beebe, on a settlement of the affairs and business of said firm, will be largely indebted to it, and also to Ferrie Henshaw, for moneys advanced and paid out by him in excess of his proportion as said partner for the debts of said firm, the precise amount of which can not be ascertained until the debts of said firm are paid and a settlement is had between said Beebe and said Henshaw of all the matters relating to said partnership; and whereas the said Eugene Beebe and Ferrie Henshaw are the owners, as said partners, under said name of E. Beebe & Co., of the following real estate in the city of Montgomery and county and State aforesaid, to wit:

The west half of lot No. 7, on the south side of Market street, being 25 feet in front on Market street and running back 110 feet, and also 25 feet east and west by 20 feet north and south of the northwest corner of lot No. 7, on the west side of Perry street, the whole known as "The Rialto," and which is mortgaged to Mrs. Mary Glasscock for $4,500.00; also one undivided half of three-story brick store on the north side of Market street, numbered 41, and the lot
23 on which said store is built, Stephen Schuessler being the owner of the other half of said store and lot; also an undivided half of the building and lot on which said building is erected, on the west side of Perry street, occupied by James T. Holtzclaw as a law office, he owning the other of said building and lot; also the west end of the said lot, which is No. 7, on which said office is built, being 20 feet in width north and south, and running back 100 feet, with the privilege of an alley; also those parts of lots No. 7 and 8 fronting 25 feet on Perry street, and occupied by Messrs. Rice, Jones & Wiley, and Watts & Watts, as law offices; also lots No. 8 and 3 in square No. 14, on the north side of Commerce street, fronting 25 feet on Commerce street, beginning 25 feet from the northwest corner of said lot No. 8, thence running northeast 160 feet to an alley, thence southeast along said alley 25 feet, thence southwest 160 feet to Commerce street, and thence along Commerce street to the beginning; also the south 20 feet of the lot on which Washington Hall, on the west side of Perry street, is situated, and fronting 20 feet on Perry street and running back 75 feet, part of Washington Hall being on said 20 feet; also one undivided half interest in a tract of land called "The Old Montgomery Race Track," about 2 miles from said city of Montgomery, and containing 80 acres, the other half being owned by Josiah Morris; also lots Nos. 1, 2, 3, and 4 in square 19 of Scott's plat of the city of Montgomery;

And whereas the said firm of E. Beebe & Co. also own the following personal property, to wit: a steam launch now lying at the wharf
24 in said city of Montgomery, called *Enterprise*, of Montgomery,

and the stock and fixtures, furniture, billiard tables and appurtenances, and stock of liquors, barrels, and glasses on hand in the building in said city called "The Rialto:"

Now, therefore, in consideration of the premises, and to protect and secure the creditors of said firm, and to enable the said Henshaw the more easily and readily to pay and settle the debts of said firm, and to protect and secure the said Ferrie Henshaw for the monies he has advanced and paid out for said firm of E. Beebe & Co. in excess of his proportion thereof, and to protect and secure him for all moneys I may owe said firm or said Henshaw, on a settlement between us of the affairs and business of said firm, I, the said Eugene Beebe, have granted, bargained, sold, and conveyed, and do hereby grant, bargain, sell, and convey all my interest and estate in the above-described real and personal property, as said partner or otherwise, to the said Ferrie Henshaw, in trust, to sell the same at such times and places, and on such terms, on credit or for cash, or for part cash and part credit, and at private or public sale, as the best interests of the said creditors of said firm and of him and myself as he may determine, and *and* to apply the proceeds thereof to the payment of the debts of the said firm, and to the payment of what I may be found indebted to said firm or to Ferrie Henshaw on the settlement between us of the affairs and business of the said firm; and if any excess should remain in his hands from the sale of said property after the payment of said debts of said firm and of what I may owe the said firm or owe him on the said settlement of the business and affairs of said firm, then he shall pay back to me such excess, and if there should remain in his hands any of said property not required to be sold for the purposes aforesaid, then on such final settlement between us he shall convey the same to me, my heirs, or assigns.

In witness whereof I, the said Eugene Beebe, have hereunto set my hand and seal this the 22nd day of March, A. D. 1877.

EUGENE BEEBE. [SEAL.]

Signed, sealed, and delivered in presence of

J. A. ELMORE.
GUS DYER.

STATE OF ALABAMA, *Montgomery County:*

I, Charles W. Buckley, judge of the probate court in and for the county and State aforesaid, hereby certify that Eugene Beebe, whose name is signed to the foregoing conveyance known to me, acknowledged before me on this day that, being informed of the contents of the said conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this 23rd day of March, A. D. 1877.

C. J. BUCKLEY,
Judge of Probate Court Montgomery County.

STATE OF ALABAMA, *Montgomery County:*

OFFICE OF THE JUDGE OF PROBATE COURT.

I hereby certify that the within deed was filed in this office for record on the 23rd day of March, 1877, at 3 o'clock p. m., and duly recorded in Book 8 of Deeds, page 566, and examined.

C. W. BUCKLEY,
Judge Probate Court Montgomery County.

26 STATE OF ALABAMA, *Montgomery County:*

I, Frances C. Randolph, judge of the probate court in and for said county and State, hereby certify that the above and foregoing three pages numbered 13, 14, 15 contain a true, full, and perfect copy of an original deed from Eugene Beebe to Ferrie Henshaw, as the same remains of record in my office as such judge.

In testimony whereof, I have hereunto set my hand and caused the seal of said probate court to be affixed, at Montgomery, Alabama, this 10th day of March, A. D. 1890.

F. C. RANDOLPH,
Judge Probate Court Montgomery County, Ala.

Filed March 10th, 1890, at 10.50 o'clock a. m.

J. W. DIMMICK,
Clerk U. S. Circuit Court, Middle District of Alabama.

In the circuit court of the United States for the middle district of Alabama. In equity.

Notice of motion before circuit judge for receiver, &c.

THE UNITED STATES OF AMERICA
against
EUGENE BEEBE, WILLIAM A. HENSHAW, ET AL. } No. 122.

To Eugene Beebe, William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, Dasie B. Henshaw, the heirs at law of Gilbert I. Henshaw,
27 deceased, Catherine I. Ferris, The Montgomery Land and Improvement Company, The Montgomery Light Company, The Freidman Vinegar and Cider Works, The Southern Cotton Oil Company, The Cleveland Cider Company, Abbie F. Rice.

You will please take notice that on Thursday, March 20, 1890, at ten o'clock in the morning of that day, in the city of New Orleans, Louisiana, before the Honorable Don A. Pardee, United States circuit judge, at his chambers in the U. S. custom-house building, complainant in the above-entitled cause will move for the appointment of a receiver of the property and rent; and will also move that an injunction pendente lite be issued against you and each of you, your agents, employees, and against such other persons as may be made parties hereto, in accordance with the prayer of said bill.

L. E. PARSONS, Jr.,
United States Attorney, Solicitor for the Complainant.

Received in office March 10, 1890.

B. W. WALKER, *U. S. Marshal.*

Marshal's return of notice.

Executed by serving copy of the within notice at Montgomery, Alabama, March 10, 1890, upon William D. Westcott, sheriff of Montgomery County, Alabama, and on Vincent M. Elmore, register in chancery of Montgomery County, Alabama, and upon T. Gardner Foster, secretary Montgomery Light Company, Henry C. Moses, president, and F. M. Billing, secretary Montgomery Land and Improvement Company, upon J. W. Black, agent Southern Cotton Oil Company, and John Durr, jr., president of the Freidman Vinegar and Cider Company, and on Eugene Beebe, H. C. Semple, of the firm of Brickle Sempld & Gunter, attys., & (on Arrington & Graham, by delivering copy to E. A. Graham of said firm March 11th, 1890).

28

Mch. 10, '90.

B. W. WALKER, *U. S. Marshal.*
By L. D. COX, *Deputy.*

Returned and filed March 11, 1890.

J. W. DIMMICK, *Clerk.*

Summons.

UNITED STATES OF AMERICA, *Middle District of Alabama:*

THE UNITED STATES OF AMERICA, COMPLAINANT,
and
EUGENE BEEBE, WILLIAM A. HENSHAW, ET AL., The Montgomery Light Company, The Montgomery Land & Improvement Company, The Southern Cotton Oil Company, The Freidman Vinegar and Cider Works, et al., defendants.

In equity. No. 122.

The President of the United States of America to William A. Henshaw, Christiana Henshaw, Cornelia H. Henshsw, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, Dasie B. Henshaw, and the heirs of Gilbert I. Henshaw, who are citizens of the State of New York, and *and* Catherine I. Ferris, who is a citizen of the State of New Jersey, greeting:

29

You are hereby commanded and strictly enjoined, that laying all other matters aside, and notwithstanding any other excuse, you and each of you personally be and appear before the judge of the circuit court of the United States for the middle district of Alabama, at the clerk's office of the said court in the city of Montgomery, at rules to be had on the first Monday in May next, to answer a bill of complaint exhibited against you in the said court by The United States of America and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars. And have there then this writ.

To the marshal of the United States for the middle district of Alabama, to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, on the 11th day of March, in the year of our

Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for the Middle District of Alabama.

W. H. H. MILLER,
Atty. Gen. U. S.,
L. E. PARSONS, Jr.,
U. S. Atty.,
Complainant's Solicitors.

NOTE.—The defendants are required and hereby notified to enter appearance in the above-entitled cause in the clerk's office of said court, on or before the rule day next ensuing, to wit: The fifth day of
30 May, 1890, or the bill may be taken pro confesso against them.

J. W. DIMMICK, *Clerk.*
W. H. H. MILLER,
Atty. Gen. U. S.,
L. E. PARSONS, Jr.,
U. S. Atty.,
Complainant's Solicitors.

Received in office this 11th day of March, 1890.

B. W. WALKER, *U. S. Marshal.*

The within defendants are not inhabitants of and are not to be found in the middle district of Alabama, on the 11th day of March, 1890.
Dated March 11, 1890.

B. W. WALKER, *U. S. Marshal.*

Returned and filed March 11, 1890.

J. W. DIMMICK, *Clerk.*

Summons.

UNITED STATES OF AMERICA, *Middle District of Alabama:*

THE UNITED STATES OF AMERICA, COMPLAINANT,
and
EUGENE BEEBE, WILLIAM A. HENSHAW, ET AL.,
The Montgomery Light Company, The Montgomery Land & Improvement Company, The Southern Cotton Oil Company, The Freidman Vinegar and Cider Works, et al., defendants.
} In Equity.

The President of the United States of America, to Eugene Beebe, The Montgomery Light Company, The Montgomery Land and Im-
31 provement Company, The Freidman Vinegar and Cider Works, who are citizens of the State of Alabama, greeting:

You are hereby commanded and strictly enjoined, that laying all other matters aside, and notwithstanding any other excuse, you and each of you personally be and appear before the judge of the circuit court of the United States for the middle district of Alabama, in the clerk's office of

the said court in the city of Montgomery, at rules to be had on the first Monday in April next, to answer a bill of complaint exhibited against you in the said court by the United States of America and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars. And have there then this writ.

To the marshal of the United States for the middle district of Alabama, to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, on the 10th day of March, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for the Middle District of Alabama.
W. H. H. MILLER,
Atty. Gen. U. S.,
L. E. PARSONS, Jr.,
U. S. Atty.,
Complainant's Solicitor.

NOTE.—The defendants are required and hereby notified to enter
32 appearance in the above-entitled cause, in the clerk's office of said court, on or before the rule day next ensuing, to wit: The seventh day of April, 1890, or the bill may be taken pro confesso against them.

W. H. H. MILLER,
Atty. Gen. U. S.
J. W. DIMMICK, *Clerk.*
L. E. PARSONS, Jr.,
U. S. Atty.,
Complainant's Solicitor.

Received in office this 10th day of March, 1890.
B. W. WALKER, *U. S. Marshal.*

The within summons served on the defendant', Eugene Beebe, T. G. Foster, secretary Montgomery Light Company; H. C. Moses, president Montgomery Land and Improvement Company; John Durr, jr., president Freidman Vinegar and Cider Company, at Montgomery, on the 10th day of March, 1890, by delivering to and leaving with him a copy thereof, and at the same time showing him the original with the seal of the court attached.

W. W. WALKER, *U. S. Marshal,*
By L. D. COX, *Deputy Marshal.*

Returned and filed March 11, 1890.
J. W. DIMMICK, *Clerk.*

33 *Summons.*

UNITED STATES OF AMERICA, *Middle District of Alabama.*

THE UNITED STATES OF AMERICA, COMPLAINANT,
and
EUGENE BEEBE, WILLIAM A. HENSHAW, ET AL., The Montgomery Light Company, The Montgomery Land and Improvement Company, The Southern Cotton Oil Company, The Freidman Vinegar and Cider Works, et al., defendants. } In equity.

The President of the United States of America to the Southern Cotton Oil Company, who is a citizen of the State of New Jersey, greeting:

You are hereby commanded and strictly enjoined, that, laying all matters aside, and notwithstanding any other excuse, you personally be and appear before the judge of the circuit court of the United States for the middle district of Alabama, at the clerk's office of the said court in the city of Montgomery, at rules to be had on the first Monday in April next, to answer a bill of complaint exhibited against you in said court by The United States of America, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you of two hundred and fifty dollars. And have there then this writ.

To the marshal of the United States for the middle district of Alabama, to execute.

34 Witness, The Hon. M. W. Fuller, Chief Justice of the Supreme Court of the United States on the 10th day of March in the year of our Lord one thousand eight hundred and ninety, and of the independence of the United States of America the one hundred and fourteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for the Mid. Dist. of Ala.
W. H. H. MILLER,
Atty. Gen. U. S.
L. E. PARSONS, Jr.,
U. S. Atty.,
Complainant's Solicitor.

NOTE.—The defendant is required and hereby notified to enter appearance in the above entitled cause, in the clerk's office of said court, *or* on or before the rule day next ensuing, to wit: The seventh day of April, 1890, or the bill may be taken pro confesso against them.

J. W. DIMMICK, *Clerk,*
W. H. H. MILLER,
Atty. Gen. U. S.
L. E. PARSONS, Jr.,
U. S. Atty.,
Complainant's Solicitor.

Received in this office this 10th day of March, 1890.

B. W. WALKER,
U. S. Marshal.

The within summons served on the defendant J. W. Black, agent, representative of Southern Cotton Oil Company, March 10, 1890, at Montgomery on the 10th day March, 1890, by delivering to and leaving with him a copy thereof, and at the same time showing
35 him the original, with the seal of the court attached.

B. W. WALKER,
U. S. Marshal,

By L. D. COX,
Deputy Marshal.

Returned and filed March 12, 1890.

J. W. DIMMICK, *Clerk.*

Summons.

UNITED STATES OF AMERICA, *Middle District of Alabama.*

THE UNITED STATES OF AMERICA, COMPLAINANT,
and
EUGENE BEEBE, WM. A. HENSHAW, ET AL., THE Montgomery Light Company, The Montgomery Land and Improvement Company, The Southern Cotton Oil Co., Abbie F. Rice, The Freidman Vinegar and Cider Works, et al., defendant.

The President of the United States of America to Abbie F. Rice, wife of W. P. Rice, of Fort Payne, Alabama, who is a citizen of the State of Alabama, greeting:

You are hereby commanded and strictly enjoined, that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear before the judge of the circuit court of the United States for the middle district of Alabama, at the clerk's office of the said court in the city of Montgomery, at rules to be had on the first Monday in
36 April next, to answer a bill of complaint exhibited against you in the said court by The United States of America, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you of two hundred and fifty dollars. And have there then this writ.

To the marshal of the United States for the middle district of Alabama, to execute.

Witness, The Hon. M. W. Fuller, Chief Justice of the Supreme Court of the United States, on the 10th day of March, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for the Mid. Dist. of Ala.

W. H. H. MILLER,
Atty. Gen. U. S.

L. E. PARSONS, Jr.,
U. S. Atty.,
Complainant's Solicitor.

NOTE.—The defendant is required and hereby notified to enter appearance in the above entitled cause, in the clerk's office of said court, on or

before the rule day next ensuing, to wit, the seventh day of April, 1890, or the bill may be taken pro confesso against them.

J. W. DIMMICK, *Clerk.*

37 W. H. H. MILLER,
Atty. Gen. U. S.
L. E. PARSONS, Jr.,
U. S. Atty., Complainant's Solicitor.

Received in office this 10th day of March, 1890.
B. W. WALKER,
U. S. Marshal.

Returned unexecuted, parties absent on a trip North, March 29, 1890.
B. W. WALKER,
U. S. Marshal.

Returned and filed April 4, 1890.
J. W. DIMMICK, *Clerk.*

Motion for personal service on absent defendants, and publication.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES OF AMERICA
vs.
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, The Montgomery Light Company, The Montgomery Land and Improvement Company, The Freidman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice, et al. } No. 122.

38 Comes the complainant, the United States of America, and represents that the defendants, William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, Dasie B. Henshaw, Catherine I. Eerris, the heirs at law of Gilbert I. Henshaw, deceased, Edwin R. Cleveland and Arthur B. Cleveland, a partnership doing business under the firm name of Cleveland Cider Company, The Southern Cotton Oil Company, and Abbie F. Rice, are not inhabitants of and are not to be found in the middle district of Alabama, and have not voluntarily appeared to said cause; wherefore, motion is made for an order requiring said defendants, and each of them, to appear, plead, answer, or demur to said bill by Monday, the fifth day of May, A. D. 1890, and to do further and receive what the said court shall consider in that behalf; and that service of said order shall be made personally upon each of said defendants; and in the event that personal service shall not be practicable, as may appear by the return of the marshal upon said order, that publication against said absent defendants, and

each of them, shall be made, under the direction of the clerk of this court, as required by law, and the prayer of said bill.

March 27th, 1890.

THE UNITED STATES OF AMERICA,
bt L. E. PARSONS, Jr., *U. S. Atty.*

39 GEO. H. PATRICK,
Special Assistant U. S. Attorney,
Solicitors for Complainant.

Filed and entered March 27, 1890.

J. W. DIMMICK, *Clerk.*

Order for personal service and publication.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES OF AMERICA
vs.
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, The Montgomery Light Company, The Montgomery Land and Improvement Company, The Freidman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice, et al. } No. 122.

It appearing to the court that the bill in this case is to enforce a lien upon and a claim to certain real property within the district, and that certain of the defendants are not inhabitants of nor to be found within the district, and have not voluntarily appeared to answer said bill:

It is ordered that William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, defendants to said bill, who reside in the city of Brooklyn, in the State of New York; and Samuel W. Henshaw, Mary S.
40 Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, and Dasie B. Henshaw, defendants to said bill, who reside in the city and State of New York; and Catherine I. Ferris, defendant to said bill, who resides in Montclair, in the State of New Jersey; and Edwin R. Cleveland and Authur B. Cleveland, partners, doing business under the name of Cleveland Cider Company, defendants to said bill, who reside in the State of Ohio; and the Southern Cotton Oil Company, defendants to said bill, who reside in the State of New Jersey; and Abbie F. Rice, defendant to said bill, who resides in Fort Payne, in the northern district of Alabama; and the heirs at law of Gilbert I. Henshaw, deceased, who resides in the State of New York, do appear, plead, answer, or demur to said bill by Monday, the fifth day of May, 1890.

That this order shall be served on such absent defendants by the marshal of the district of the United States where they respectively reside; and also upon the person in possession or charge of the property described in said bill.

And it is further ordered that, in addition to said service as herein provided for, this order shall be published, under the direction of the

clerk of this court, once a week for six consecutive weeks, in the Montgomery Daily Advertiser, a newspaper printed and published in Montgomery, Alabama, and in the New York Tribune, a newspaper
41 printed and published in the city, county, and State of New York.

At chambers, April 5th, 1890.

DON A. PARDEE,
Circuit Judge.

Filed April 7, 1890.

J. W. DIMMICK, *Clerk.*

Order for personal service and marshal's return.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES OF AMERICA
vs.
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, THE Montgomery Light Company, The Montgomery Land and Improvement Company, The Freidman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice et al. } No. 122.

It appearing to the court that the bill in this case is to enforce a lien upon, and a claim to, certain real property within the district; and that certain of the defendants are not inhabitants of, nor to be found within, the district, and have not voluntarily appeared to answer said bill:

It is ordered, that William A. Henshaw, Christainna Henshaw,
42 Cornelia H. Henshaw, defendants to said bill, who reside in the city of Brooklyn, in the State of New York; and Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, and Daisie B. Henshaw, defendants to said bill, who reside in the city and State of New York; and Catherine I. Ferris, defendant to said bill, who resides in Montclair, in the State of New Jersey; and Edwin R. Cleveland and Arthur B. Cleveland, partners, doing business under the name of Cleveland Cider Company, defendants to said bill, who reside in the State of Ohio; and the Southern Cotton Oil Company, defendants to said bill, who reside in the State of New Jersey; and Abbie F. Rice, defendant to said bill, who resides at Fort Payne, in the northern district of Alabama; and the heirs at law of Gilbert I. Henshaw, deceased, who reside in the State of New York, do appear, plead, answer, or demur to said bill by Monday, the fifth day of May, 1890.

That this order shall be served on such absent defendants by the marshal of the district of the United States where they respectively reside; and also upon the person or persons in possession or charge of the property described in said bill.

And it is further ordered, that in addition to said service as herein provided for, this order shall be published, under the direction of the clerk of this court, once a week for six consecutive weeks, in the Montgomery Daily Advertiser, a newspaper printed and published in Montgomery,

Alabama, and in the New York Tribune, a newspaper printed
43 and published in the city, county, and State of New York.
At Chambers, April 5th, 1890.

DON A. PARDEE,
Circuit Judge.

Filed April 7th, 1890.

J. W. DIMMEICK, *Clerk.*

Middle district of Alabama, April 7th, 1890.
A true copy of the original order on file.
Attest: J. W. DIMMICK, *Clerk of said Court.*
Received in office April 12, 1890.
U. S. marshal eastern district of New York.
Executed by serving duly certified copies of the within order on Mrs. Cornelia H. Henshaw, wife of the late Gilbert I. Henshaw; Kate G. Henshaw, Annie M. Henshaw, and Daisy B. Henshaw, daughters of Mrs. Cornelia Henshaw, at No. 370 Jefferson ave., in the city of Brooklyn, on April 15, 1890. Gilbert I. Henshaw has been dead six years, Irving Henshaw has been dead five year', and Mrs. Christiana Henshaw, wife of William A. Henshaw, has been dead one year. Florian E. Henshaw died in March. Gilbert I. Henshaw left no heir.

DANIEL LAKE,
U. S. Marshal.

Returned and filed April 23rd, 1890.

J. W. DIMMICK, *Clerk.*

Service and marshal's return.

44 In the circuit court of the United States for the district of Alabama. In equity.

THE UNITED STATES OF AMERICA
vs.
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, THE Montgomery Light Company, The Montgomery Land and Improvement Co., The Freidman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice et al. } No. 122.

It appearing to the court that the bill in this case is to enforce a lien upon, and claim to, certain real property within the district; and that certain of the defendants are not inhabitants of, nor to be found within, the district, and have not voluntarily appeared to answer said bill:

It is ordered, that William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, defendants to said bill, who reside in the city of Brooklyn, in the State of New York; and Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, and Daisie B. Henshaw, defendants to said bill, who reside in the city and State of New York, and Catherine I. Ferris, defendant to said bill, who resides in Montclair, in the State of New Jersey, and Edwin R. Cleveland and Arthur B. Cleveland, partners, doing business under the name of Cleveland Cider Company, defendants to said bill, who reside in the State of Ohio; and the Southern Cotton Oil Com-
45 pany, defendants to said bill, who reside in the State of New Jer-

sey; and Abbie F. Rice, defendant to said bill, who resides at Fort Payne, in the northern district of Alabama; and the heirs at law of Gilbert I. Henshaw, deceased, who reside in the State of New York, do appear, plead, answer, or demur to said bill by Monday, the fifth day of May, 1890.

That this order shall be served on such absent defendants by the marshal of the district of the United States where they respectively reside, and also upon the person or persons in possession or charge of the property described in said bill;

And it is further ordered, that in addition to said service, as herein provided for, this order shall be published, under the direction of the clerk of this court, once a week for six consecutive weeks in the Montgomery Daily Advertiser, a newspaper printed and published in Montgomery, Alabama, and in the New York Tribune, a newspaper printed and published in the city, county, and State of New York.

At Chambers, April 5th, 1890.

DON A. PARDEE,
Circuit Judge.

Filed April 7th, 1890.

J. W. DIMMICK, *Clerk.*

Middle district of Alabama, April 7th, 1890.
A true copy of the original order on file.
Attest:

J. W. DIMMICK,
Clerk of said Court.

Received in office April 12, 1890.
U. S. marshal, district of New Jersey.

46 Executed by serving a duly certified copy of the within order on the defendant, Mrs. Catherine I. Ferris, at Montclair, N. J., by handing to and leaving with her said copy, and at the same time exhibiting to her this original with the seal of court attached and reading to her on this 15th day of April, 1890.

W. BUDD DEACON,
U. S. Marshal.
By PATRICK MCHUGH,
Deputy U. S. Marshal.

Returned and filed April 23d, 1890.

J. W. DIMMICK, *Clerk.*

Order for personal service and marshal's return.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, THE Montgomery Light Company, The Montgomery Land and Improvement Co., The Friedman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice, et al. } No. 122.

It appearing to the court that the bill in this case is to enforce a lien upon and a claim to certain real property within the district, and that cer-

47 tain of the defendants are not inhabitants of nor to be found within the district and have not voluntarily appeared to answer said bill, it is ordered that William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, defendants to said bill, who reside in the city of Brooklyn, in the State of New York; and Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, and Daisie B. Henshaw, defendants to said bill, who reside in the city and State of New York; and Catherine I. Ferris, defendant to said bill, who reside' in Montclair in the State of New Jersey; and Edwin R. Cleveland and Arthur B. Cleveland, partners doing business under the name of Cleveland Cider Company, defendants to said bill, who reside in the State of Ohio; and the Southern Cotton Oil Company, defendants to said bill, who reside in the State of New Jersey; and Abbie F. Rice, defendant to said bill, who resides at Fort Payne, in the northern district of Alabama; and the heirs at law of Gilbert I. Henshaw, deceased, who reside in the State of New York, do appear, plead, answer, or demur to said bill by Monday, the fifth day of May, 1890.

That this order shall be served on such absent defendants by the marshal of the district of the United States where they respectively reside; and also upon the person or persons in possession or charge of the property described in said bill.

And it is further ordered that, in addition to said service as herein provided for, this order shall be published, under the direction of the clerk of this court, once a week for six consecutive weeks, in the

48 Montgomery Daily Advertiser, a newspaper printed and published in Montgomery, Alabama, and in the New York Tribune, a newspaper printed and published in the city, county, and State of New York.

At Chambers, April 5th, 1890.

DON A. PARDEE,
Circuit Judge.

Filed April 7th, 1890.

J. W. DIMMICK, *Clerk.*

Middle district of Alabama, April 7th, 1890.
A true copy of the original order on file.
Attest:

J. W. DIMMICK,
Clerk of said Court.

Received in office April 7th, 1890.

B. W. WALKER,
U. S. Marshal.

Executed by serving duly certified copies of within order on H. C. Moses, W. L. Brock, Thomas H. Watts, sr., T. F. Harrison, J. A. Weiss, Tom Davis, of Davis Bros., Sim Phillips, James O'Brien, April 10, 1890; Eugene Beebe, April 11, 1890; J. S. Pinckard, April 14, 1890; T. G. Foster, April 16, 1890; J. W. Black, April 23, 1890.

B. W. WALKER,
U. S. Marshal.

By L. D. COX,
Deputy.

Returned and filed April 23, 1890.

J. W. DIMMICK, *Clerk.*

49 *Order for personal service and marshal's return.*

In the circuit court of the United States for the middle district of Alabama.
In equity.

THE UNITED STATES OF AMERICA
vs.
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, The Montgomery Light Company, The Montgomery Land and Improvement Co., The Freidman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice, et al.
No. 122.

It appearing to the court that the bill in this case is to enforce a lien upon and a claim to certain real property within the district, and that certain of the defendants are not inhabitants of nor to be found within the district and have not voluntarily appeared to answer said bill, it is ordered that William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, defendants to said bill, who reside in the city of Brooklyn, in the State of New York; and Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, and Daisie B. Aenshaw, defendants to said bill, who
50 reside in the city and State of New York; and Catherine I. Ferris, defendant to said bill, who resides in Montclair, in the State of New Jersey; and Edwin R. Cleveland and Arthur B. Cleveland, partners doing business under the name of Cleveland Cider Company, defendants to said bill, who reside in the State of Ohio; and the Southern Cotton Oil Company, defendants to said bill, who reside in the State of New Jersey; and Abbie F. Rice, defendant to said bill, who resides at Fort Payne, in the northern district of Alabama; and the heirs at law of Gilbert I. Henshaw, deceased, who reside in the State of New York, do appear, plead, answer, or demur to said bill by Monday, the fifth day of May, 1890.

That this order shall be served on such absent defendants by the marshal of the district of the United States where they respectively reside, and also upon the person or persons in possession or charge of the property described in said bill.

And it is further ordered that in addition to said service as herein provided for, this order shall be published, under the direction of the clerk of this court, once a week for six consecutive weeks in the Montgomery Daily Advertiser, a newspaper printed and published in Montgomery, Alabama, and in the New York Tribune, a newspaper printed and published in the city, county, and State of New York.

At chambers, April 5th, 1890.

DON A. PARDEE,
Circuit Judge.

Filed April 7th, 1890.

J. W. DIMMICK, *Clerk.*

51 Middle District of Alabama, April 7th, 1890.
A true copy of the original order on file.
Attest: J. W. DIMMICK, *Clerk of said Court.*

Received in office April 12, 1890.
U. S. Marshal Southern District of N. Y.

Executed by serving duly certified copy of the within order on Samuel W. Henshaw and Mary S. Henshaw, his wife, on Sarah R. Buxton, and on George A. Henshaw and Zuriah E. Henshaw, his wife, on April 12, 1890, and on William A. Henshaw on April 14, 1890, and all at the city of New York, in my district. The other within-named defendants could not be found in my district.

JOHN W. JABOBUS,
U. S. Marshal.

Returned and filed April 23, 1890. J. W. DIMMICK, *Clerk.*

Order for personal service and marshal's return.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES OF AMERICA
vs.
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, The Montgomery Light Company, The Montgomery Land and Improvement Co., 52 The Friedman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice, et al. } No. 122.

It appearing to the court that the bill in this case is to enforce a lien upon and a claim to certain real property within the district, and that certain of the defendants are not inhabitants of nor to be found within the district and have not voluntarily appeared to answer said bill, it is ordered that William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, defendants to said bill, who reside in the city of Brooklyn, in the State of New York; and Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, and Daisie B. Henshaw, defendants to said bill, who reside in the city and State of New York; and Catherine I. Ferris, defendant to said bill, who resides in Montclair, in the State of New Jersey; and Edwin R. Cleveland and Arthur B. Cleveland, partners doing business under the name of Cleveland Cider Company, defendants to said bill, who reside in the State of Ohio; and the Southern Cotton Oil Company, defendants to said bill, who reside in the State of New Jersey; and Abbie F. Rice, defendant to said bill, who resides at Fort Payne, in the northern district of Alabama; and the heirs at law of Gilbert I. Henshaw, deceased, who reside in the State of New York, do appear, plead, answer, or demur to said bill by Monday, the fifth day of May, 1890.

53 That this order shall be served on such absent defendants by the marshal of the district of the United States where they respectively reside; and also upon the person or persons in possession or charge of the property described in said bill.

And it is also further ordered, that in addition to said service as herein provided for, this order shall be published, under the direction of the clerk of this court, once a week for six consecutive weeks, in the Montgomery Daily Advertiser, a newspaper printed and published in Montgomery, Alabama, and in the New York Tribune, a newspaper printed and published in the city, county, and State of New York.

At Chambers, April 5th, 1890.

DON A. PARDEE,
Circuit Judge.

Filed April 7th, 1890.

J. W. DIMMICK, *Clerk.*

Middle district of Alabama, April 7th, 1890.
A true copy of the original order on file.
Attest:

J. W. DIMMICK,
Clerk of said Court.

Received in office April 11, 1890.

B. F WADE,
U. S. Marshal, Northern District of Ohio.

54 The within named Edwin R. Cleveland or Arthur B. Cleveland not found within my district, neither have they or either of them a residence therein.

B. F. WADE,
U. S. Marshal.
By GEO. WYMAN,
Deputy U. S. Marshal.

Returned and filed Nov. 7th, 1890.

J. W. DIMMICK, *Clerk.*

Amendment to bill of complaint.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
WILLIAM A. HENSHAW ET ALS., EUGENE BEEBE, The Montgomery Light Company, The Montgomery Land and Improvement Company, The Friedman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice et als., defendants.
No. 122.

55 The complainant, by leave of the court first had and obtained, amends the bill of complaint herein by adding as paragraph 2½ of said bill the following:

(2½) That on the 29th day of January, 1872, said Eugene Beebe became and was surety on the official bond of Charles W. Dustan, deputy postmaster at Demopolis, Alabama, in the full sum of twelve thousand

dollars, money of the United States, conditioned that said Charles W. Dustan, as deputy postmaster as aforesaid, should well and truly execute the duties of said office according to law and the instructions of the Postmaster-General, and faithfully render accounts of his receipts and expenditures as deputy postmaster to the Post-Office Department in the manner and form prescribed by the Postmaster-General, and pay the balance of all moneys that should come into his hands from postage collected, postage stamps and stamped envelopes sold, or money orders issued by him, or from any other source connected with the postal service, in the manner prescribed by the Postmaster-General of the United States; that of the money that came into his hands as such officer from postage collected, postage stamps and stamped envelopes sold, and money orders issued by him, and from other sources connected with the postal service, the said Dustan failed and refused to pay to the United States, in the manner prescribed by the Postmaster-General, or in any manner, on January 30th, 1873, the sum of four hundred and forty-one dollars and forty-nine cents; that afterwards, to wit, on the day of , 1874, suit by summons and complaint was duly commenced in the district court of the United States for the middle district of Alabama by the United States against the said Eugene Beebe, and service of the

56 same was duly made October 13th, 1874, upon said Beebe by the marshal of said district; that such proceedings were afterwards had in said suit that on December 26th, 1878, judgment against said Beebe was duly entered in said court for said sum of four hundred and forty-one dollars and forty-nine cents principal and one hundred and thirty-seven dollars and ninety-six cents interest, amounting to five hundred and seventy-nine dollars and forty-five cents, together with the costs of said suit, which amounted to the further sum of fifty-three dollars and eighty-two cents; that motion for new trial was made by said defendant, which motion was, on December 9th, 1879, overruled by said court; that on July 28th, 1880, a writ of fieri facias, commonly called an execution upon said judgment, was duly issued, and on same day placed in the hands of the marshal of said district, which said execution was, on November 1st, 1880, duly returned by said marshal endorsed, "No property found;" that said several sums aforesaid are still due and unpaid to the United States, together with interest thereon.

Complainant amends the 7th paragraph of said bill of complaint by striking out the words "in open court," on the 18th line of said paragraph, and by adding at the end of said paragraph the following: That in the entry of said judgment against said Hatchett, as administrator, under date of February 6th, 1885, it is made to appear that a jury of twelve good and lawful men, to wit, G. L. Werth and eleven others, duly found said verdict for the plaintiff in said sum of one hundred dollars as aforesaid, upon which verdict judgment was so accordingly entered; that in the entry of said judgment against said Beebe, under date February 7th, 1885, it is made to appear that a jury of twelve good and lawful men, to wit, G. L. Werth and eleven others, duly

57 found said verdict for the plaintiff, in said sum of one hundred dollars as aforesaid, upon which verdict judgment was so accordingly entered, which verdict appears in the minutes of said court as "dated February 6th, 1885;" and orator states, avers, and charges, that in truth and in fact, no such verdict or verdicts were found in said court

by said G. L. Werth and eleven other men, as a jury, nor by any other jury or jurors; that no question was submitted to said or any jurors in said cause, or causes; that no judgment was entered based upon such or any verdict by a jury in said cause or causes; that said G. L. Werth was not a juror serving as such in said court, on either the 6th or 7th of February, 1885; that said G. L. Werth had been a juror at said term, but that he and all other jurors in attendance at said adjourned February term of said court, had been duly discharged some days prior to the said 6th day of February, 1885, to wit: On the 4th day of February, 1885, but that prior to their discharge, said jurors had not been empanelled, nor had they rendered any verdict in said cause or causes, nor had said cause or causes been heard or decided in said court, prior to the discharge of said jurors. Orator has discovered the facts hereinabove mentioned, since the filing of the bill, from an examination of the records of said court, to wit: Pages 163 to 184 of the minutes of said adjourned February term, 1885, and of some of the persons who served as jurors at said court, and of the original papers in said causes, which do not show the verdict of any jury; and orator expects to establish the same by said records and papers, and by the evidence of William D. Westcott, P. B. Williams, Philip Priess, G. L. Werth, John F. Jones, and others of said jurors; and of William H. Smith, esq., who was attorney of the United States for said district, in
58 February, 1885, from whose statements, since he ceased to be such United States attorney, orator at the date hereinbefore in this bill mentioned, discovered the other facts set out and referred to in said seventh paragraph, and by whose evidence, and that of other persons at present to orator unknown, said statements are expected to be established.

Complainant further amends said bill of complaint by striking out the names, as parties defendant, wherever they appear in said bill, of Gilbert I. Henshaw and Florien E. Henshaw, who have died intestate and unmarried; of Christiana Henshaw, wife of William A. Henshaw, who is dead; and of Thomas E. Henshaw.

Complainant further amends said bill of complaint by adding to the ninth paragraph of said bill, following the words "Arthur B. Cleveland, and a citizen of the State of Ohio," the words "William H. Buxton, a citizen of the State of New York," and by making said Buxton a party defendant to said bill of complaint.

Complainant further amends the 11th paragraph of said bill of complaint by adding at the end thereof, the following: "And orator states, avers, and charges, that said Henshaw, as such assignee, and the said heirs of said Henshaw, have paid indebtedness due by said Beebe, before having satisfied and paid the debt aforesaid due to the United States, to wit: Amongst others a debt due by said Beebe to Mrs. Sarah S. Watson and J. Curry Watson, amounting to about fifteen thousand dollars."

W. H. H. MILLER,
Attorney-General of the United States.

GEO. PATRICK,
Solicitor for Complainant.

59 Filed by leave of the court 5th day of January, 1891.

J. W. DIMMICK, *Clerk.*

Demurrer of Friedman Vinegar and Cider Works.

Circuit court of the United States, for the middle district of Alabama.
In equity.

UNITED STATES
vs.
EUGENE BEEBE ET ALS.

The separate demurrer of the Friedman Vinegar and Cider Works to the bill of complaint filed in the above-stated cause by the United States against the said Beebe, this defendant, and others.

This defendant says that they are advised that there is good cause of demurrer to said bill of complaint, and by protestation not by confessing any of the matters and things to be true as therein alleged and set forth, it demurs to the same bill of complaint and for cause of demurrer assigns the following:

I. That said bill of complaint contains no matter of equity whereon this court can grant any decree or give complainant any relief as against this defendant.

60 II. It appears from the allegations of said bill that the matter of the claim of the complainant against Eugene Beebe and Ferrie Henshaw, which is the foundation of this suit, has been adjudicated in the circuit court of the United States for the middle district of Alabama, in a suit, commenced by the said complainant against the said parties, and no sufficient ground is shown for vacating and setting aside the judgment therein rendered.

III. It appears from the allegations contained in said bill of complaint that the claim of the United States against the said Beebe and said Henshaw has been reduced to judgment, and that the said Beebe has paid said judgment, and the money paid by him has been received and accepted by the complainant, the United States, and said bill contains no offer to refund the said money, and does not show that the same has ever been tendered to the said Beebe.

IV. It appears from the allegations of said bill of complaint that the claim of the United States against the said Beebe and the said Henshaw, which is the foundation of this action, was sued upon in the circuit court of the United States for the middle district of Alabama, a court having jurisdiction thereof, and that in said suit it was ascertained that the amount due from each of the said parties to the United States, was the sum of one hundred dollars; that the said judgment against the said Beebe was paid by him to, and was accepted by, the United States, and there is no fact alleged in the bill which shows that the said judgment was obtained by fraud, accident, or mistake.

61 V. It appears from the allegations of said bill of *of* complaint that the claim of the complainant, the United States, against the said Beebe and the said Henshaw has been litigated in a court having jurisdiction thereof and that the amount due by them to the complainant, the United States, has been ascertained and determined by the judgment of said court, and no facts are alleged in said bill which are sufficient in equity to authorize this court to vacate and set aside said judgment.

VI. It appears from the allegations of said bill of complaint that the amount of the claim in favor of the United States against the said Beebe

has been ascertained and determined by a court of competent jurisdiction, and that the same has been reduced to judgment and paid by the said Beebe; and that the claim in favor of the United States against the said Henshaw has also been ascertained and determined by a court of competent jurisdiction, and the same has been reduced to judgment, and no facts are alleged in said bill authorizing a decree of this court vacating and setting aside said judgment, nor is any necessity shown for this court to take jurisdiction to enforce the collection of said judgment against the estate of the said Henshaw.

VII. The said bill is multifarious in this, that it unites as defendants separate and distinct parties claiming separate and distinct interests in the property sought to be subjected to the payment of the alleged debt to the United States.

62 VIII. Said bill is multifarious in this, that it unites in one and the same action a suit against the said Beebe and those claiming property through and under the said Beebe and a suit against the heirs of the said Ferrie Henshaw, and it is not shown by the allegations of said bill that the claim against the said Beebe and the said Henshaw was a joint claim.

IX. It appears from the allegations of the said bill of complaint that the judgment rendered against the said Beebe and the judgment rendered against the representatives of the said Henshaw were rendered by and with the consent of the district attorney of the United States representing the United States, and it is not shown that the agreement and consent of the said district attorney to the rendition of said judgment was obtained by any fraud practiced on him by the said Beebe or the representative of the said Henshaw or through any accident or mistake, without fault or negligence on the part of the said district attorney.

X. It is shown by the allegations of the said bill of complaint that the judgment sought to be vacated and set aside by this proceeding are valid and binding judgments both upon complainant, the United States, and the said Beebee and the representative of the said Henshaw.

Wherefore, this defendant separately demurs to the said bill of complaint and pray the judgment of this court whether they shall make answer to said bill of complaint otherwise than as aforesaid, and

63 they pray to be hence dismissed, with their costs and charges in this behalf most wrongfully expended.

ARRINGTON & GRAHAM,
Solicitors for Defendants.

We hereby certify that as counsel for defendant in the foregoing demurrer that in our opinion the same are well founded in law and proper to be filed.

ARRINGTON & GRAHAM,
Solicitors for Defendant.

John W. Durr, jr., president of the Friedman Vinegar & Cider Works, a corporation organized under the laws of the State of Alabama, one of the defendants in the above-stated cause and the demurrant in the foregoing demurrer, makes oath that the said demurrer is not interposed for delay of the cause in which it is filed.

JOHN W. DURR, Jr.

Sworn to and subscribed before me on this the 5th day of May, A. D. 1890.

J. M. SAVAGE, *Deputy Clerk.*

Filed in open court May 5th, 1890.

J. W. DIMMICK, *Clerk.*

64 *Demurrer of Montgomery Land & Improvement Co. and Abbie F. Rice.*

Circuit court of the United States for the middle district of Alabama.
In equity.

UNITED STATES
vs.
EUGENE BEEBE ET AL.

The joint and separate demurrer of the Montgomery Land & Improvement Company, the Montgomery Light Company, the Southern Cotton Oil Company, and Abbie F. Rice, four of the defendants to the bill of complaint filed in the above-stated cause by the United States against the said Beebe, these defendants and others.

These defendants say that they are advised that there is good cause of demurrer to said bill of complaint, and by protestation, not confessing any of the matters and things to be true as therein alleged and set forth, they do jointly and separately demur to the said bill of complaint, and for cause of demurrer assign the following:

I. That said bill of complaint contains no matter of equity whereon this court can grant any decree or give complainant any relief as against these defendants.

65 II. It appears from the allegations of said bill that the matter of the claim of the complainant against Eugene Beebe and Ferrie Henshaw, which is the foundation of this suit, has been adjudicated in the circuit court of the United States for the middle district of Alabama in a suit commenced by the said complainant against the said parties, and no sufficient ground is shown for vacating and setting aside the judgment therein rendered.

III. It appears from the allegations contained in said bill of complaint that the claim of the United States against the said Beebe and the said Henshaw has been reduced to judgment and that the said Beebe has paid said judgment and the money paid by him has been received and accepted by the complainant, the United States, and said bill contains no offer to refund the said money and does not show that the same has ever been tendered to the said Beebe.

IV. It appears from the allegations of said bill of complaint that the claim of the United States against the said Beebe and the said Henshaw, which is the foundation of this action, was sued upon in the circuit court of the United States for the middle district of Alabama, a court having jurisdiction thereof, and that in said suit it was ascertained that the amount due from each of the said parties to the United States was the

sum of one hundred dollars; that the said judgment against the said Beebe was paid by him to and accepted by the United States, and there is no fact alleged in the bill which shows that the said judgment was obtained by fraud, accident, or mistake.

66 V. It appears from the allegations of said bill of complaint that the claim of the complainant, the United States, against the said Beebe and the said Henshaw has been litigated in a court having jurisdiction thereof and that the amount due by them to the complainant, the United States, has been ascertained and determined by the judgment of said court, and no facts are alleged in said bill which are sufficient in equity to authorize this court to vacate and set aside said judgment.

VI. It appears from the allegations of said bill of complaint that the amount of the claim in favor of the United States against the said Beebe has been ascertained and determined by a court of competent jurisdiction, and the same has been reduced to judgment, and no facts are alleged in said bill authorizing a decree of this court vacating and setting aside said judgment, nor is there any necessity shown for this court to take jurisdiction to enforce the collection of said judgment against the estate of the said Henshaw.

VII. The said bill is multifarious in this—that it unites as defendants separate and distinct parties claiming separate and distinct interests in the property sought to be subjected to the payment of the alleged debt to the United States.

VIII. Said bill is multifarious in this—that it unites in one and the same action a suit against the said Beebe and those claiming property through and under the said Beebe and a suit against the heirs of the said Ferrie Henshaw, and it is not shown by the allegations of said bill that the claim against the said Beebe and the said Henshaw was a joint claim.

67 IX. It appears from the allegations of said bill of complaint that the judgment rendered against the said Beebe and the judgment rendered against the representatives of the said Henshaw were rendered by and with the consent of the district attorney of the United States, representing the United States, and it is shown that the agreement and consent of the said district attorney to the rendition of said judgment was obtained by any fraud practiced on him by the said Beebe or the representative of the said Henshaw or through any accident or mistake, without fault or negligence on the part of the said district attorney.

X. It is shown by the allegations of said bill of complaint that the judgment sought to be vacated and set aside by this proceeding are valid and binding judgments both upon the complainant, the United States, and the said Beebe and the representative of the said Henshaw.

Wherefore these defendants do jointly and separately demur to the said bill of complaint and pray the judgment of this court whether they shall make answer to said bill of complaint otherwise than as aforesaid, and they pray to be hence dismissed, with their costs and charges in this behalf most wrongfully expended.

TOMPKINS & TROY,
Sols. for Defendant.

68 We hereby certify, as counsel for defendants in the foregoing demurrers, that in our opinion the same are well founded in law and proper to be filed.

TOMPKINS & TROY,
Sols. for Defendants.

H. C. Moses, president of the Montgomery Land and Improvement Company, a corporation organized under the laws of the State of Alabama, one of the defendants in the above-stated cause and one of the demurrants in the foregoing demurrer, makes oath that the said demurrer is not interposed for delay of the cause in which it is filed.

H. C. MOSES.

Sworn to and subscribed to before me this 5th day of May, 1890.

J. W. DIMMICK,
U. S. Comr. Cir. Ct. Mid. Dist. Ala.

Filed the 5th day of May, 1890.

J. W. DIMMICK, *Clerk.*

Demurrer of Eugene Beebe.

In the circuit court of the United States for the middle district of Alabama, fifth district.

UNITED STATES
vs.
EUGENE BEEBE ET AL.

69 The demurrer of Eugene Beebe, defendant, to the bill of complaint in the above-entitled cause.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, does demur to the said bill, and for cause of demurrer shows:

1. That it appears in and by said bill that complainant elected to proceed severally against the parties to the said bond of Widmer, and recovered in such several proceedings a several judgment against this defendant, Eugene Beebe, and against William T. Hatchett, as administrator of the said Ferrie Henshaw, deceased; and that the said complainant has filed a joint bill against said Beebe and the heirs of said Henshaw to set aside said judgment and to get the benefit of a further prosecution of the said original cause of action against each of said original parties. Wherefore this defendant says there is a misjoinder of parties defendants.

2. That said bill of complaint contains no matter of equity whereon this court can grant any decree or *or* give complainant any relief as against this defendant.

3. It appears from the allegations of said bill that the matter of the claim of the complainant against this defendant, Eugene Beebe, and Ferrie, which is the foundation of this suit, has been adjudicated in the

70 circuit court of the United States for the middle district of Alabama in a suit commenced by the *the* said complainant against the said parties, and no sufficient ground is shown for vacating and setting aside the judgement therein rendered.

3. It appears from the allegations contained in said bill of complaint that the claim of the United States against this defendant, said Beebe, and the said Henshaw has been reduced to judgment, and that the said Beebe has paid said judgment, and the money paid by him has been received and accepted by complainant, The United States, and said bill contains no offer to refund the said money, and does not show that the same has ever been tendered to defendant, Eugene Beebe.

4. It appears from the allegations of said bill of complaint that the claim of the United States against this defendant, Beebe, and the said Henshaw, which is the foundation of this action, was sued on in the circuit court of the United States for the middle district of Alabama, a court having jurisdiction thereof, and that in said suit it was ascertained that the amount due from each of the said parties to the United States was the sum of one hundred dollars; that the said judgment against the said Beebe was paid by him to and accepted by the United States, and there is no fact alleged in the bill which shows that the said judgment was obtained by fraud, accident, or mistake.

5. It appears from the allegations of said bill of complaint that the claim of the complainant, The *the* United States, against this defend-
71 ant, Beebe, and the said Henshaw has been litigated in a court having jurisdiction thereof, and that the amount due by them to the complainant, The United States, has been ascertained and determined by the judgment of said court; and no facts are alleged in said bill which are sufficient in equity to authorize this court to vacate and set aside judgment.

6. It appears from the allegations of said bill of complaint that the amount of the claim in favor of the United States against defendant Eugene Beebe has been a'certained and determined by a court of competent jurisdiction, and the same has been reduced to judgment and paid by this defendant Beebe; and that the claim in favor of the United States against said Henshaw has also been ascertained and determined by a court of competent jurisdiction, and the same has been reduced to judgment; and no facts are alleged in said bill authorizing a decree of this court vacating and setting aside said judgment, nor is any necessity shown for this court to take jurisdiction to enforce collection of said judgment against the estate of either this defendant Beebe or said Henshaw.

7. The said bill is multifarious in this, that it unites as defendants separate and distinct parties, claiming separate and distinct interests in the property sought to be subjected to the payment of the alleged debt to the United States.

8. Said bill is multifarious in this, that it unites in one and the same action a suit against said defendant Beebe and those claiming
72 property through and under the defendant Beebe and a suit against the heirs of the said Ferrie Henshaw, and it is not shown by the allegations of said bill that the claim against the said Beebe and said Henshaw was a joint claim.

9. It appears from the allegations of said bill of complaint that the judgment rendered against the representatives of the said Hnsshaw was rendered by and with the consent of the district attorney of the United States, representing the United States, and it is not shown that the agreement and consent of the said district attorney to the rendition of

said judgment was obtained by fraud practiced on him by said Beebe, or the representative of said Henshaw, or through any accident or mistake, without fault or negligence on the part of the district attorney.

10. It is shown by the allegations of said bill of complaint that the judgments sought to be vacated are valid and binding judgments upon the complainant, The United States, and the said Beebe and the said Henshaw.

Wherefore, this defendant demurs to the said bill of complaint, and prays the judgment of this court whether he shall make answer to said bill of complaint otherwise than as aforesaid; and he prays to be hence dismissed. with his costs and charges in this behalf most wrongfully expended.

A. A. WILEY,
Sol. for Defendant Eugene Beebe.

73 I hereby certify, as counsel for defendant in the foregoing demurrers, that in my opinion the same are well founded in law and proper to be filed.

A. W. WILEY,
Sol. for Defendant Beebe.

Eugene Beebe, one of the defendants, in the above-entitled cause and the demurrant in the foregoing demurrer, makes oath that said demurrer is not interposed for delay of the cause in which it is filed.

EUGENE BEEBE.

Sworn to and subscribed before me this 9th day of May, 1890.

J. W. DIMMICK.

Filed in open court May 9, 1890.

J. W. DIMMICK, *Clerk.*

Demurrer of Wm. A. Henshaw et als.

In the circuit court of the United States for the middle district of Alabama. Fifth circuit.

UNITED STATES
vs.
EUGENE BEEBE ET AL.

The demurrer of William A. Henshaw and Christiana Henshaw his wife; Cornelia Henshaw, Samuel Henshaw, and Mary S. Henshaw his wife; Sarah R. Buxton, George A. Henshaw and Zuriah E. Henshaw his wife; Annie M. Henshaw, Kate G. Henshaw, Daisy S. Henshaw, and Cathrine I. Ferris, defendants to the bill of complaint of the United States, the above-named plaintiff.

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These defendants by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, do demur to said bill and for cause of demurrer show:

1. That it appears in and by said bill that the complainant elected to proceed severally against the parties to the said bond of Widmer, and recovered in such several proceeding a several judgment against said Eugene Beebe and against William T. Hatchett as administrator of said

Ferrie Henshaw, and that the said complainant has filed a joint bill against the said Beebe and the heirs of said Henshaw to set aside said judgment and to get the benefit of a further prosecution of the said original cause of action against each of said original parties. Wherefore these defendants say there is a misjoinder of them with said Beebe, that they have no concern or interest in the prosecution or defense of said cause as to said Beebe, nor has he any in the prosecution or defense of the action as to these defendants.

2. That said bill does not aver or show any ground for vacating, by the equitable interference of this court, the judgment shown by said bill to have been rendered against the administrator of Ferrie Henshaw merging complainant's claim therein: In this, the said bill does not
75 show that said judgment was obtained by accident, mistake, or fraud of the defendant in said original suit without the fault or negligence of the complainant in said original suit.

3d. That it appears in and by said bill that the said complainant's claim is merged in the judgment therein mentioned to have been rendered against the administrator of Ferrie Henshaw, which said judgment the bill claims is still due and unpaid to complainant; and that said bill does not show anything whatever to impeach the regularity and validity of said judgment on a collateral attack thereof as by said bill is made; that the said bill only sets up acts on the part of the said administrator of Ferrie Henshaw, which were legal in all respects and which he had a right to do in the manner stated in said bill to have been done, and which if they deceived the district attorney of the complainant amount to no fraud in law.

4th. That the acts of said administrator of Ferrie Henshaw set up in said bill as grounds for vacating said judgment are shown by said bill to have been done in open court and in adversary proceedings and by way of answer and defense to the then pending suit against him, and if complainant's solicitor in said cause relied on or was deceived by the same to the detriment of complainant it was the result wholly of his own fault or negligence for which said administrator and these respondents are not to be charged.

5th. That it appears in and by said bill that the judgment therein mentioned as having been rendered against the administrator of
76 said Ferrie Henshaw and, which merged the complainant's claim was duly and regularly rendered by a court having jurisdiction of the subject-matter and parties in adversary proceedings; and that it does not appear that there existed any relation of trust or confidence, or other relation between complainant, or its agents or attorneys and the said Hatchett as administrator of Ferrie Henshaw, making it incumbent on the latter not to make all the statements and not to do all of the acts alleged to have been made and done in open court as an inducement to and to procure the rendition of said judgment; and that it does appear in and by said bill that if said complainant's attorney in said suit at law relied on said statements and acts he did so at his peril and at the peril of complainant's cause, and that it was in no way incumbent upon the said administrator to take charge and manage both sides of the same cause, and that his failure to do so is no cause in equity for vacating said judgment.

6th. That the said bill does not show that the complainant has a good

cause of action against the estate of said Ferrie Henshaw, deceased, and against the respondents as heirs of said Henshaw, if the said judgment was vacated as prayed for in said bill.

Wherefore and for divers other good causes of demurrer appearing in the said bill, the defendants do demur thereto, and hereby demand the judgment of this court whether they shall be compelled to make any further or other answer to said bill; and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

SEMPLE & GUNTER,
Sol. for Demurrants.

77 UNITED STATES OF AMERICA,
Southern District of New York, City and State of New York:

Before me, a United States commissioner in and for southern district of New York, personally appeared George A. Henshaw, one of the demurrants above mentioned, who, being first duly sworn, doth depose and say that the foregoing demurrer is not interposed for delay.

GEO. A. HENSHAW.

Subscribed and sworn to before me this 1st day of May, 1890.

JOSEPH A. WELCH,
U. S. Commissioner, Southern Dist. New York.

I, William A. Gunter, of counsel for the demurrants above mentioned in said cause, hereby certify that the aforegoing demurrer is in my opinion well founded in point of law.

W. A. GUNTER,
Sol. for Demurrants Above Mentioned.

Filed by leave of court this 9th day of May, A. D. 1890.

J. W. DIMMICK, *Clerk.*

78 *Order sustaining demurrers and allowing amendment.*

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES, COMPLAINANT,
against
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, THE Montgomery Light Company, The Montgomery Land and Improvement Company, The Friedman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice, et al., defendants.

This cause coming on to be heard upon demurrer to the original bill, and the same having been argued by Mr. Geo. H. Patrick, special assistant U. S. attorney, for complain't, and by Messrs. Henry C. Tompkins and William A. Gunter for defendants, and being understood by the court, it is considered that said demurrer is well taken, and be and the same hereby is sustained; and on motion of complainant's said solicitor, it is

ordered that complainant have leave to amend said bill of complaint on or before the rule day, the first Monday in December, 1890.

DON A. PARDEE,
U. S. Circuit Judge.

79 In open court, November 6th, 1890.
Filed November 6th, 1890.

J. W. DIMMICK, *Clerk.*

Petition for amendment to original bill.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES, COMPLAINANT,
vs.
WILLIAM A. HENSHAW ET AL., EUGENE BEEBE, The Montgomery Light Company, The Montgomery Land and Improvement Co., The Friedman Vinegar and Cider Works, Cleveland Cider Company, The Southern Cotton Oil Company, Abbie F. Rice, et al., defendants. } No. 122.

Comes the complainant, the United States, by Geo. H. Patrick, special assistant U. S. attorney, and respectfully petitions for an order allowing the bill of complaint in the above-entitled cause to be amended, according to the rules of practice in equity for the courts of the United States.

GEO. H. PATRICK,
Special Assistant U. S. Attorney,
Solicitor and of Counsel for Complainant.

To the Honorable DON A. PARDEE, *U. S. Circuit Judge.*

80 *Order allowing amendment.*

AT CHAMBERS, *November 27th, 1890.*

Ordered that said complainant, the United States, have leave to amend said bill of complaint, on or before the rule day, the 1st Monday in January, 1891.

DON A. PARDEE,
U. S. Circuit Judge.

Filed Nov. 28th, 1890.

J. W. DIMMICK, *Clerk.*

Demurrer of Montgomery Land & Improvement Co. and Abbie F. Rice to bill as amended.

Circuit court of the U. S. middle district, State of Alabama. In equity.

THE UNITED STATES
vs.
EUGENE BEEBE ET ALS.

The joint and separate demurrer of the Montgomery Land & Improvement Company, the Montgomery Light Company, the Southern Cotton

Oil Company, and Abbie F. Rice, four of the defendants to the bill of complaint as amended, filed in the above-stated cause against the said Beebe, these defendants, and other.

81 These defendants, jointly and separately, say that they are advised that there is good cause of demurrer to the said bill of complaint as amended, and by protestation, not confessing or admitting any of the matters and things to be true as therein alleged and set forth, they do jointly and separately demur to the said bill of complaint as amended, and for cause of demurrer assign the following:

1. They assign to said bill as amended separately each ground of demurrer assigned to the original bill of complaint filed in this cause as shown and set forth in the demurrer filed by them therein on the 5th day of May, 1890, which said demurrer is hereby referred to and adopted as a demurrer to the said bill as amended.

And as additional grounds of demurrer these demurrants further show:

2. That said amended bill make a new case.

3. That the matter stated in said amendment is not germane to the purpose and object of the original bill and is new matter.

4. That said bill as amended is multifarious in this that the subject-matter of said original bill are two disconnected and separate subjects sought to be litigated in the said bill as amended.

82 5. That the said bill as amended is multifarious in this that in the said original bill it is sought to vacate and set aside certain judgments, one rendered against the said Beebe, and the other against one Hatchett as administrator of Henshaw, whereas the matter set up in the amended bill seeks the collection of a judgment rendered on a distinct cause of action against the defendant Beebe.

And these defendants specially demur to so much of the said bill as amended as claims relief on the judgment of December 26, 1878, and for cause of demurrer show:

1st. That it does not appear in and by the allegations of said amended bill that the said Ferrie Henshaw, under whom these defendants claim a portion of the property involved in this suit, or that his heirs after his death, had any notice or knowledge of *or* the alleged claim of the complainant evidenced by said judgment, or that having such notice he or they had any of the property so conveyed by the said Beebe, or after said notice made any payment of the debts of the said Beebe therefrom in derogation of the right of the complainant.

2. That said matter set up in said bill as amended is distinct and separate subject-matter from the subject-matter of the original bill filed in this action.

Wherefore these defendants do jointly and sep'rately demur to the said bill of complaint as amended, and pray the judgment of this

83 court whether they shall make answer to the said bill of complaint otherwise than as aforesaid, and they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully expended.

TOMPKINS & TROY,
Solicitors for Defendants.

We hereby certify, as counsel for the defendants in the foregoing demurrers that, in our opinion, the same are well founded in law and proper to be filed.

TOMPKINS & TROY,
Solicitors for Defendants.

H. C. Moses, the president of the Montgomery Land & Improvement Company, a corporation organized under the laws of the State of Alabama, one of the defendants in the above-stated cause and one of the demurrants in the foregoing demurrers, makes oath that the foregoing demurrers are not interposed for delay of the cause in which they are filed.

H. C. MOSES.

Sworn to and subscribed before me this 29th day of April, 1891.

FRED S. BALL,
Notary Public.

Filed the 29th day of Apr., 1891.

J. W. DIMMICK, *Clerk.*

84 *Demurrer of Friedman Vinegar & Cider Works to bill as amended.*

In the circuit court of the United State' for the middle district of Alabama. In equity.

UNITED STATES
vs.
EUGENE BEEBE ET ALS.

The separate demurrer of the Freidman Vinegar and Cider Works to the bill of complaint filed in the above-stated cause by the United States against said Beebe, this defendant and others, as amended.

This defendant, by protestation not confessing any or all of the matters and things in the plaintiff's bill of complaint as amended contained, to be true in such manner and form as the same is therein set forth and alleged, demurs to the said bill as amended, and for cause of demurrer assigns and shows the several grounds specifically set forth in the demurrer filed to the original bill on the 9th day of May in behalf of this demurrant, which said demurrer is hereby referred to and adopted as a demurrer to the said bill as amended. And as additional grounds of demurrer the demurrant further shows:

That the said bill makes a new case, and that the said amendment is not germane to the purpose and object of the original bill and renders the amended bill multifarious, in this, that there are now two dis-
85 tinct and disconnected subjects sought to be litigated in the said bill as amended; one the vacation of a judgment upon a distinct cause of action, the other for the collection of a judgment upon a distinct cause of action.

And as to so much of said bill as amended as claims relief in reference to the said debt, evidenced by said judgment of the 26th of December, 1878, this defendant demurs, and for cause of demurrer shows:

1. That the said amended bill does not aver or show, as to the new matter incorporated by the amendment, that the said Ferrie Henshaw

had during his life, or that his heirs after his death, had any notice or knowledge of the said alleged claim of the complainant, evidenced by said judgment of the 26th day of December, 1877, or, having such notice, that he or they had then any of the said property, so conveyed by the *said property, so conveyed by the* said Beebe, or, after such notice, that he or they had then any of the said property, so conveyed by the said Beebe, or, after such notice, made any payments of the debts of said Beebe therefrom in derogation of the right of complainant.

2. That the said amended bill does not show that the said property, or any part thereof, or the funds thereof, so conveyed by said Beebe to said Ferrie Henshaw, is now, or was, at the date of the filing of said original or amended bill, in the possession of this defendant, or that it is in any way responsible for said property or any part thereof to complainant.

86 Whereupon and for divers other good causes of demurrer, appearing in said bill as amended, the defendant demurs thereto, and hereby demands the judgment of the court whether it shall be compelled to make any other, further, or other answer to said bill as amended, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

ARRINGTON & GRAHAM,
Sol's for Deft. Freidman Vinegar and Cider Works.

We hereby certify that, as counsel for defendant in the foregoing demurrer, that in our opinion the same are well founded in law and proper to be filed.

ARRINGTON & GRAHAM,
Solrs. for Dft.

John W. Durr, jr., President of the Freidman Vinegar and Cider Works, a corporation organized under the laws of the State of Alabama, one of the defendants in the above-stated cause, and the demurrant in the foregoing demurrer makes oath that the said demurrer is not interposed for delay of the cause in which it is filed.

JOHN W. DURR, JR.

Sworn to and subscribed to before me this the 29th day of May, 1891.
J. W. DIMMICK, *Clerk.*

Filed the 29th day of May, 1891.
J. W. DIMMICK, *Clerk.*

87 *Demurrer of Eugene Beebe to bill as amended.*

In the circuit court of the United States for the middle district of Alabama. Fifth circuit.

UNITED STATES
vs.
EUGENE BEEBE ET AL.

The demurrer of Eugene Beebe, one of the defendants to the bill of complaint of the United States, the above-named plaintiffs, as amended.

The defendant, by protestation not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, does demur to the said bill as amended, and for cause of demurrer assigns and shows the several grounds specifically set forth in the demurrer filed to the original bill on the 9th day of May in behalf of this demurrant, which said demurrer is hereby referred to and adopted as a demurrer to the said bill as amended. And as additional grounds of demurrer, this demurrant further shows:

That the said amended bill makes a new case, and that the said amendment is not germane to the purpose and object of the original bill and renders the amended bill multifarious, in this, that there are now two distinct and disconnected subjects sought to be litigated in the said bill as amended; one, the vacation of a judgment upon a distinct cause of
88 action, the other for the collection of a judgment upon a distinct cause of action.

And as to so much of said bill as amended as claims relief in reference to the said debt, evidenced by said judgment of the 26th of December, 1878, this defendant demurs, and for cause of demurrer shows:

1. That the said amended bill does not aver or show, as to the new matter incorporated by the amendment, that the said Ferrie Henshaw had during his life, or that his heirs after his death, had any notice or knowledge of the said alleged claim of the complainant, evidenced by the said judgment of the 26th of December, 1878, or that having such notice, that he or they had then any of the said property, so conveyed by the said Beebe, or after such notice made any payment of the debts of said Beebe therefrom in derogation of the right of complaint.

2. That the said amended bill does not show that the said property, or any part thereof, or the funds thereof, so conveyed by said Beebe to said Ferrie Henshaw, is now, or was, at the date of the filing of said original or amended bill, in the possession of this defendant, or that he is in any way responsible for said property or any part thereof to the complainant.

Whereupon and for divers good causes of demurrer, appearing in the said bill, the defendant does demur thereto, and hereby demands the judgment of this court whether he shall be compelled to make
89 any other, further, or other answer to this said bill, and pray to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

A. A. WILEY,
Sol. for Defendant Eugene Beebe.

I, A. A. Wiley, of counsel for defendant, Eugene Beebe, above mentioned in said cause, hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

A. A. WILEY.

UNITED STATES OF AMERICA,
Middle District of Alabama:

Before me, Benj. P. Seals, a United States commissioner in and for the middle district of Alabama, personally appeard Eugene Beebe, one of the

within-named demurrants, who, being first duly sworn, doth depose and say that the above and foregoing is not interposed for delay.

EUGENE BEEBE.

Sworn to and subscribed before me this 20th day of May, A. D. 1891.

BENJ. P. SEALS,
U. S. Commissioner, Mid. Dist. of Ala.

Filed the 20th day of May, 1891.

J. W. DIMMICK, *Clerk.*

90 *Demurrer of Wm. A. Henshaw et als. to bill as amended.*

In the circuit court of the United States for the middle district of Alabama. Fifth circuit.

UNITED STATES
vs.
EUGENE BEEBE ET ALS.

The demurrer of William A. Henshaw, Cornelia H. Henshaw, Samuel Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah E. Henshaw, Annie M. Henshaw, Kate G. Henshaw, and Catherine J. Ferris, defendants to the bill of complaint of the United States, the above-named plaintiff as amended.

The defendants by protestation, not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, do emur to the said bill as amended, and for cause of demurrer assign and show the several grounds specifically set forth in the demurrer filed to the original bill on the 9th day of May in behalf of these demurrants (except W. H. Buxton), which said demurrer is hereby referred to and adopted as a demurrer to the said bill as amended. And as additional grounds of demurrer these demurrants further show:

91 2. That the said amended bill makes a new case and that the said amendment is not germane to the purpose and object of the original bill and renders the amended bill multifarious in this, that there are now two distinct and disconnected subjects sought to be litigated in the said bill as amended, one, the vacation of a judgment upon a distinct cause of action, the other for the collection of a judgment upon a distinct cause of action.

And as to so much of said bill as amended as claims relief in reference to the said debt evidenced by said judgment of the 26th of December, 1878, these defendants demur and for cause of demurrer show (1) that the said amended bill does not aver or show as to the new matter incorporated by the amendment that the said Ferrie Henshaw had during his life or that his heirs after his death had any notice or knowledge of the said alleged claim of the complainant evidenced by the said judgment of the 26th of December, 1878, or that having such notice that he or they had then any of the said property so conveyed by the said Beebe or after such notice made any payment of the debts of said Beebe therefrom in derogation of the right of complainant.

11. That the said amended bill does not show that the said property or any part thereof or the funds thereof, so conveyed by said Beebe to said Ferrie Henshaw, is now or was at the date of the filing of said original or amended bill in the possession of these defendants or of any of them or that they or either of them are in any way responsible for said property or any part thereof to the complainant.

92 Whereupon and for divers other good causes of demurrer appearing in the said bill, the defendants do demur thereto, and hereby demand the judgment of this court, whether they shall be compelled to make any other further or other answer to this said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

SEMPLE & GUNTER,
Attorneys.

UNITED STATES OF AMERICA,
Southern District of New York:

Before me, Joseph A. Welch, a United States commissioner in and for the southern district of New York, personally appeared George A. Henshaw, one of the within-named demurrants who, being first duly sworn, doth depose and say that the above and foregoing demurrer is not interposed for delay.

GEORGE A. HENSHAW.

Sworn to and subscribed before me this the 28th day of February, 1891.

JOSEPH A. WELCH,
U. S. Commissioner, Southern District New York.

I, William A. Gunter, of counsel for the demurrants above mentioned in said case, hereby certify that the above and foregoing demurrer is, in my opinion, well founded in point of law.

W. A. GUNTER.

93 Filed March 3, 1891.

J. W. DIMMICK, *Clerk.*

Order sustaining demurrers and dismissing bill.

UNITED STATES
vs.
EUGENE BEEBE ET ALS.

In the circuit court of the United States for the middle district of Alabama. In equity. No. 122.

This cause coming on again to be heard is submitted for decree upon the demurrers filed by the several defendants to the bill of complaint as amended, and the same being argued by counsel and duly examined and understood by the court, it is considered that the said demurrers are well taken.

It is thereupon ordered, adjudged, and decreed by the court that the said demurrers be, and the same are hereby, sustained.

It is further ordered, adjudged, and decreed that the said bill of complaint be, and the same is hereby, dismissed out of this court.

94 This the 29th day of May, 1897.

JOHN BRUCE, *Judge.*

Filed May 31, 1897.

J. W. DIMMICK, *Clerk.*

Order to file bill of revivor and to issue order to show cause, etc.

In the circuit court of the United States for the middle district of Alabama, in the fifth circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
WILLIAM A. HENSHAW, CORNELIA H. HENSHAW, Samue' W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Annie M. Henshaw, Kate G. Henshaw, Daisy B. Henshaw, Catharine I.
95 Ferris, Eugene Beebe, The Montgomery Light Company, The Montgomery Land & Improvement Company, The Freidman Vinegar and Cider Works, Abbie F. Rice, The Southern Cotton Oil Company, The Cleveland Cider Company, defendants.

No. 122. In equity.

In this cause, the bill of revivor against the heirs at law of Eugene Beebe, deceased, one of said defendants, to-wit: Julia Mason and Frederick H. Mason, Louisa Berry and William Berry, Walter Beebe and Catherine Beebe, William Beebe and Grace Beebe, and Ida Beebe, being exhibited to the court, it is ordered that the same be filed, and upon motion of Mr. George H. Patrick, special assistant United States attorney, for complainant, it is ordered that the clerk, under his signature and the seal of said court, issue an order directed to each of said persons named as such heirs at law, commanding and requiring them, and each of them, to be and appear before the judge of our said court on the rule day, the first Monday in August, 1895, to show cause, if any they or either of them can, why the suit and proceedings therein had of the United States of America against said William A. Henshaw, Eugene Beebe and others, in said court, should not stand revived, and be revived, against them and each of them, as such heirs at law of said Eugene Beebe, and be in the same plight and condition as the same were at the time of the death of the said Eugene Beebe, and further to
96 stand to and abide such order and decree in the premises as may be made in said cause.

July 18th, 1895.

JOHN BRUCE, *Judge.*

Filed July 18th, 1895.

J. W. DIMMICK, *Clerk.*

Bill of revivor against heirs at law of E. Beebe, deceased.

In the circuit court of the United States for the middle district of Alabama, in the fifth circuit.

THE UNITED STATES OF AMERICA, COMPLAINA'T,
against
WILLIAM A. HENSHAW, CORNELIA H. HENSHAW, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Annie M. Henshaw, Kate G. Henshaw, Daisy B. Henshaw, Catherine I. Ferris, Eugene Beebe, The Montgomery Light Company, The Montgomery Land & Improvement Company, The Freidman Vinegar and Cider Works, Abbie F. Rice, The Southern Cotton Oil Company, The Cleveland Cider Company, defendants.

No. 122. In equity.

97 To the honorable the justice and judges of the circuit court of the United States for the middle district of Alabama:

United States of America, by its Attorney-General, brings this bill of revivor against Julia Mason and Frederick H. Mason, her husband, residing at Greenpoint, Long Island, New York; Louisa Berry and William Berry, her husband, residing at Newburgh, New York; Walter Beebe and Catherine Beebe, his wife, residing at Newburgh, New York; William Beebe and Grace Beebe, his wife, residing in New York City, New York, all of whom are citizens of the State of New York; and Ida Beebe, an unmarried woman, a citizen of the State of Alabama, residing at Montgomery, in said middle district of Alabama, the heirs at law of Eugene Beebe, deceased, late of Montgomery, Alabama, all being of lawful age; and thereupon orator complains and says:

That on the tenth day of March, 1890, orator filed a bill in equity in this court against William A. Henshaw, Christiana Henshaw, Cornelia H. Henshaw, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, George A. Henshaw, Zuriah . Henshaw, Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, Dasie B. Henshaw, Catherine I. Ferris, and the heirs at law of Ferrie Henshaw, deceased, late of Montgomery, Alabama; Eugene Beebe, the Montgomery Light Company, the Montgomery Land and Improvement Company, the Freidman Vinegar and Cider Works, Abbie F. Rice, the

98 Southern Cotton Oil Company, and the Cleveland Cider Company, alleging that Eugene Beebe and Ferrie Henshaw were indebted to orator in a large sum, to wit, twenty-eight thousand one hundred and fifty-eight dollars and fifty-six cents ($28,158.56), together with interest thereon from January 1, 1873, and that your orator had a prior and paramount lien upon certain real property in Montgomery County, Alabama, within said middle district of Alabama, to wit, the property commonly known as No. 28 Dexter avenue, formerly No. 28 Market street (the Rialto); No. 11 North Perry street, formerly known also as "Washington Hall," and as "Cashin's;" No. 22 South Perry street; No. 109 Dexter avenue, formerly No. 41 Market street, in the city of

Montgomery; and the Montgomery Race Track, near the city of Montgomery and situated in section one (1), township sixteen (16) north, range seventeen (17) east, in section thirty-six (36), township seventeen (17) north, range seventeen (17) east, of which said Eugene Beebe and said Ferrie Henshaw were joint owners in fee simple, and which said property is more fully described in the said bill, by reason of the insolvency of said Beebe and said Henshaw, the assignment of said property, and the other circumstances set up and alleged in said original bill, and seeking a statement of account between the parties, the condemnation and sale of said property to the satisfaction of said indebtedness, the appointment of a receiver, the issuing of an injunction restraining trespassing upon and conveying said property, and other proper relief.

That thereafter, the said parties named as defendants to said bill having been duly served with the writ of subpœna, appeared in said
99 court and filed their demurrers to the said bill of complaint, and the said demurrers were, after argument by counsel and consideration by the court, sustained, with leave to orator to amend said bill of complaint within a certain time specified by the court.

Within the time prescribed, to wit, on January 5th, 1891, orator filed an amendment which set up an additional indebtedness of five hundred and seventy-nine dollars and forty-five cents ($579.45), together with the further sum of fifty-three dollars and eighty-two cents ($53.82), bearing interest from December 26, 1878, and struck out as parties defendant Christiana Henshaw, Florian E. Henshaw, and Gilbert I. Henshaw, and added party defendant, William H. Buxton.

That thereupon the said defendants interposed and filed demurrers to the said bill as amended.

That thereafter, to wit, on August 29th, 1894, said Eugene Beebe died in Montgomery, Alabama, intestate, leaving as his heirs at law said Julia, Mason and Frederick H. Mason, Louisa Berry and William Berry, Walter Beebe and Catherine Beebe, William Beebe and Grace Beebe citizens of the State of New York, and Ida Beebe, a citizen of the State of Alabama, children of James Beebe, deceased, lately a brother of said Eugene Beebe, deceased.

That no answer has yet been filed in said court in said cause.

Wherefore, orator prays that the said cause may be revived by
100 decree of this honorable court, and that it may proceed to a final decree in its favor in accordance with the prayer of the said original bill of complaint herein.

Orator further prays that a writ of subpœna may issue in due form of law, directed to the aforesaid defendants, Julia Mason, Frederick H. Mason, Louisa Berry, William Berry, Walter Beebe, Catherine Beebe, William Beebe, Grace Beebe, and Ida Beebe, heirs at law of said Eugene Beebe, deceased, and requiring them and each of them to appear and show cause, if any they or either of them can, why this cause should not be revived as against them; and if no cause shall be shown by the said

defendants why said bill should not be revived, that a decree be rendered and entered herein reviving said suit in favor of orator accordingly.

And orator will ever pray.

THE UNITED STATES OF AMERICA,
By RICHARD OLNEY,
Attorney-General of the United States.
HENRY D. CLAYTON,
United States Attorney.
GEO. H. PATRICK, *of Counsel.*

Filed July 18, 1895.

J. W. DIMMICK, *Clerk.*

101 *Order to heirs at law to show cause, &c., and marshal's return.*

In the circuit court of the United States for the middle district of Alabama, in the fifth circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
WILLIAM A. HENSHAW, CORNELIA A. HENSHAW, SAMUEL W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Annie M. Henshaw, Kate G. Henshaw, Daisy B. Henshaw, Catherine I. Ferris, Eugene Beebe, the Montgomery Light Company, the Montgomery Land & Improvement Company, the Freidman Vinegar and Cider Works, Abbie F. Rice, the Southern Cotton Oil Company, the Cleveland Cider Company, defendants.

No. 122.
In equity.

The President of the United States of America to Julia Mason and
102 Frederick H. Mason, residing at Greenport, Long Island, New York; Louisa Berry and William Berry, and Walter Beebe and Catherine Beebe, residing in Newburgh, New York; William Beebe and Grace Beebe, residing in New York City, New York, all of whom are citizens of the State of New York, and Ida Beebe, a citizen of the State of Alabama, residing in Montgomery, in said middle district of Alabama, heirs at law of the late Eugene Beebe, deceased, greeting:

You are hereby commanded that you, and each of you, personally appear before the judge of our circuit court of the United States for the middle district of Alabama, in the fifth circuit, in equity, on Monday, the fifth day of August, A. D. 1895, wherever the said court shall then be, then and there to show cause, if any you can, why the suit and proceedings therein had of the United States of America against William A. Henshaw, Cornelia H. Henshaw, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Annie M. Henshaw, Kate G. Henshaw, Daisy B. Henshaw, Catherine I. Ferris, Eugene Beebe, the Montgomery Light Company, the Montgomery Land and Improvement Company, the Freidman Vinegar and Cider Works, Abbie F. Rice, the Southern Cotton Oil Company, and the Cleveland Cider Company, defendants, in said court, should not stand revived against you as such heirs at law of said Eugene Beebe, deceased, and be in the same plight and condition as the same

were at the time of the death of the said Eugene Beebe; and further to stand to and abide such order and decree in the premises as may be made in said cause.

103 To the marshal of the United States for the middle district of Alabama to execute.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Montgomery, Alabama, on the 18th day of July, A. D. 1895.

J. W. DIMMICK,
Clerk U. S. Circuit Court, Middle District of Alabama.

Received in office this the 20th day of July, 1895.

W. H. TISDALE,
U. S. Marshal.

Executed by serving a copy of the within on Miss Ida Beebe in Montgomery, Ala., this the 20th day of July, 1895, and at same time showing her the original with the seal of the court thereon.

W. H. TISDALE,
U. S. Marshal,
By W. F. ADAMS, *Deputy.*

Filed July 24, 1895.

J. W. DIMMICK, *Clerk.*

104 *Order to heirs to show cause, &c., and marshal's return.*

In the circuit court of the United States for the middle district of Alabama, in the fifth circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
WILLIAM A. HENSHAW, CORNELIA H. HENSHAW, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Annie M. Henshaw, Kate G. Henshaw, Daisy B. Henshaw, Catherine I. Ferris, Eugene Beebe, the Montgomery Light Company, the Montgomery Land and Improvement Company, the Freidman Vinegar and Cider Works, Abbie F. Rice, the Southern Cotton Oil Company, Cleveland Cider Company, defendants.

No. 122. In equity.

The President of the United States of America to Julia Mason and
105 Frederick H. Mason, residing at Greenport, Long Island, New York; Louisa Berry and William Berry, and Walter Beebe and Catherine Beebe, residing at Newburgh, New York; William Beebe and Grace Beebe, residing in New York City, New York, all of whom are citizens of the State of New York; and Ida Beebe, a citizen of the State of Alabama, residing in Montgomery, in said middle district of Alabama, heirs at law of the late Eugene Beebe, deceased, greeting:

You are hereby commanded that you, and each of you, personally appear before the judge of our circuit court of the United States for the

middle district of Alabama, in the fifth circuit, in equity, on Monday, the 5th day of August, A. D. 1895, wherever the said court shall then be, then and there to show cause, if any you can, why the suit and proceedings therein had of the United States of America against William A. Henshaw, Cornelia H. Henshaw, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Arnie M. Henshaw, Kate G. Henshaw, Daisy B. Henshaw, Catherine I. Ferris, Eugene Beebe, The Montgomery Light Company, The Montgomery Land and Improvement Company, The Freidman Vinegar and Cider Works, Abblie F. Rice, The Southern Cotton Oil Company, and the Cleveland Cider Company, defendants, in said court, should not stand revived and be revived against you as such heirs at law of said Eugene Beebe, deceased, and be in the same plights and condition as the same were at the time of the death of the said Eugene Beebe; and further to stand to and abide such order and decree in the premises as may be made in said cause.

106 To the marshal of the United States for the eastern district of New York, to execute.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Montgomery, Alabama, on the eighteenth day of July, A. D. 1895.

J. W. DIMMICK,
Clerk U. S. Circuit Court for the Middle District of Alabama.

This is to certify that the within order was served on the within named Frederick H. Mason and Mrs. Julia Mason at their residence, No. 689 Leonard st., Greenpoint, Brooklyn, N. Y., by showing them this original, and leaving with each of them a true copy thereof on the 23rd day of July, 1895.

HENRY I. HAYDEN,
U. S. Marshal, E. D. of N. Y.

Dated Aug. 5th, 1895.
Filed July 26th, 1895.

J. W. DIMMICK, *Clerk.*

Order to heirs at law of Beebe, to show cause, &c., and marshal's return.

In the circuit court of the United States for the middle district of Alabama, in fifth circuit.

107 THE UNITED STATES OF AMERICA, COMPLAINANT,
against
WILLIAM A. HENSHAW, CORNELIA H. HENSHAW, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Annie M. Henshaw, Kate G. Henshaw, Daisy B. Henshaw, Catherine I. Ferris, Eugene Beebe, The Montgomery Light Company, The Montgomery Land and Improvement Co., The Friedman Vinegar and Cider Works, Abbie F. Rice, The Southern Cotton Oil Company, Cleveland Cider Company, defendants.
No. 122. In equity.

The President of the United States of America, to Julia Mason and Frederick H. Mason, residing at Greenpoint, Long Island, New York;

Louisa Berry and William Berry, and Walter Beebe and Catherine Beebe, residing in Newburgh, New York; William Beebe and Grace Beebe, residing in New York City, New York, all of whom are citizens of the State of New York; and Ida Beebe, a citizen of the State of Alabama, residing in Montgomery, in said middle district of Alabama, heirs at law of the late Eugene Beebe, deceased, greeting:

108 You are hereby commanded that you, and each of you, personally appear before the judge of our circuit court of the United States for the middle district of Alabama, in the fifth circuit, in equity, on Monday, the fifth day of August, A. D. 1895, wherever the said court shall then be, then and there to show cause, if any you can, why the suit and proceedings therein had of the United States of America against William A. Henshaw, Cornelia H. Henshaw, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Annie M. Henshaw, Kate G. Henshaw, Daisy B. Henshaw, Catherine I. Ferris, Eugene Beebe, The Montgomery Light Company, The Montgomery Land and Improvement Company, The Freidman Vinegar and Cider Works, Abbie F. Rice, The Southern Cotton Oil Company, and the Cleveland Cider Company, defendants in said court, should not stand revived and be revived against you as such heirs at law of said Eugene Beebe, deceased, and be in the same plight and condition as the same were at the time of the death of the said Eugene Beebe; and further to stand to and abide such order and decree in the premises as may be made in said cause.

To the marshal of the United States for the southern district of New York, to execute.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Montgomery, Alabama, on the eighteenth day of July, A. D. 1895.

J. W. DIMMICK,
Clerk U. S. Circuit Court, Middle District of Alabama.

109 I do hereby certify that on the 24th day of July, 1895, at the city of Newburgh, New York, in my district, I personally served the within order upon Walter Beebe and his wife, Catherine Beebe, and William Berry and his wife, Louisa Berry, as heirs at law of the within named Eugene Beebe, deceased, by exhibiting to them the within original, and at the same time delivering to and leaving with each of them a copy thereof.

And I do further certify that on the 26th day of July, 1895, at the city of New York, in my district, I personally served the within order upon William Beebe and his wife, Grace Beebe, as heirs at law of the within-named Eugene Beebe, deceased, by exhibiting to them the within original, and at the same time delivering to and leaving with each of them a copy thereof.

JOHN H. MCCURTY,
U. S. Marshal, S. D., N. Y.

Dated New York, August 1st, 1895.
Filed August 12th, 1895.

J. W. DIMMICK, *Clerk.*

Demurrer of W. R. Waller, adm'r of Eugene Beebe, dec'd, to bill as amended.

In the circuit court of the United States, middle district of Alabama.
In equity.

THE UNITED STATES
vs.
EUGENE BEEBE ET ALS.

110 The demurrer of W. R. Waller, administrator of Eugene Beebe, deceased, to the bill of complaint as amended and revived, filed in the above-stated cause against the said W. R. Waller, administrator, &c., and others.

This defendant says that he is advised that there is good cause of demurrer to the said bill of complaint as amended and revived against him, and by protestation, not confessing or admitting any of the matters and things to be true as therein alleged and set forth, does demur to the said bill of complaint as amended and revived against him, and for cause of demurrer assigns the following:

He assigns each ground of demurrer heretofore assigned and set out in the demurrer filed by the said Eugene Beebe to the said amended bill of complaint, and filed in this cause on the 20th day of May, 1891, and asks that this demurrer be taken and treated as if the several grounds of demurrer set out therein were fully set out and stated therein.

Whereupon, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto and hereby demands the judgment of this court whether he shall be compelled to make any other or further answer to the said bill of complaint as amended and revived against him, and prays to be hence dismissed with his cost and charges in this behalf most wrongfully sustained.

TOMPKINS & TROY,
Solicitors for Defendant.

111 We, the solicitors for the demurrant above mentioned in said cause, hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

TOMPKINS & TROY,
Solicitors for Defendant.

STATE OF ALABAMA, *Montgomery County.*

Before me, Harris Gunter, a notary public in and for said State and county, personally appeared W. R. Waller, demurrant above named, who is known to me, and who, being first duly sworn, doth depose and say that the above and foregoing demurrer is not interposed for delay.

W. R. WALLER.

Sworn to and subscribed in my presence this 8th day of February, 1896.

HARRIS GUNTER,
Notary Public, &c.

Filed this 8th day of February, 1896.

J. W. DIMMICK, *Clerk.*

Demurrer of Julia Mason et als., to bill as amended.

In the circuit court of the United States, middle district of Alabama.
In equity.

112 THE UNITED STATES
vs.
EUGENE BEEBE ET ALS.

The joint and separate demurrer of Julia Mason, Frederick H. Mason, Louisa Berry, William Berry, Walter Beebe, Catherine Beebe, Grace Beebe, and Ida Beebe, defendants, to the bill of complaint as amended and revived, filed in the above-stated cause against the said Eugene Beebe and others.

These defendants jointly and separately say that they are advised that there is good cause of demurrer to the said bill of complaint as amended and revived against them, and by protestation, not confessing or admitting any of the matters and things to be true as therein alleged and set forth, they do jointly and separately demur to the said bill of complaint as amended and as revived against them, and for cause of demurrer assign the following:

They assign each ground of demurrer heretofore assigned and set out in the demurrer filed by the said Eugene Beebe to the said bill of complaint, and filed in this cause on the 20th day of May, 1891, and ask*s* that this demurrer be taken and treated as if the several grounds of demurrer set out therein were fully set out and stated herein.

Whereupon, and for divers other good causes of demurrer appearing in the said bill, the defendants do demur thereto and hereby demand the judgment of this court whether they shall be compelled to make
113 any other or further answer to the said bill of complaint as amended and revived against them, and pray to be hence dismissed with their cost and charges in this behalf most wrongfully sustained.

TOMPKINS & TROY,
Solicitors for Defendants.

We, solicitors for the demurrants above mentioned in said cause, hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

TOMPKINS & TROY,
Solicitors for Defendants.

STATE OF ALABAMA, *Montgomery County.*

Before me, W. H. Thomas, a notary public in and for said State and county, personally appeared Ida Beebe, one of the demurrants above named, who is known to me, and who, being first duly sworn, doth depose and say that the above and foregoing demurrer is not interposed for delay.

MISS IDA BEEBE.

Sworn to and subscribed before me this 8th day of February, 1896.

W. H. THOMAS,
Notary Public, &c.

Filed this 8th day of February, 1896.

J. W. DIMMICK, *Clerk.*

114 *Plaintiff sets down demurrers to be argued.*

In the circuit court of the United States for the middle district of Alabama, in the fifth circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
WILLIAM A. HENSHAW, CORNELIA H. HENSHAW, Samuel W. Henshaw, Mary S. Henshaw, Sarah R. Buxton, William H. Buxton, George A. Henshaw, Zuriah Henshaw, Annie M. Henshaw, Kate G. Henshaw, Daisie B. Henshaw, Catherine I. Ferris, Eugene Beebe, Julia Mason, Frederick H. Mason, Louisa Berry, William Berry, Walter Beebe, Catherine Beebe, William Beebe, Grace Beebe, Ida Beebe, The Montgomery Light Company, The Montgomery Land and Improvement Company, The Freidman Vinegar and Cider Works, Abbie F. Rice, The Southern Cotton Oil Company, Cleveland Cider Company, William R. Waller, as administrator of Eugene Beebe, defendants.

No. 122, in equity.

The complainant, the United States of America, sets down the demurrers of the defendants to the bill of complaint as amended herein, to be argued before the honorable the circuit justice and the circuit
115 judges, or either of them, of the fifth circuit and middle district of Alabama, on Monday, May 4th, 1896, at 12 o'clock noon.

THE UNITED STATES OF AMERICA,
By HENRY D. CLAYTON,
United States Attorney.

GEO. H. PATRICK,
Special Assistant U. S. Attorney.

At rules, Monday, March 2d, 1896.
Filed and entered March 2, 1896.

J. W. DIMMICK, *Clerk.*

Order sustaining demurrers and dismissing bill.

UNITED STATES
vs.
EUGENE BEEBE ET ALS.

In the circuit court of the United States for the middle district of Alabama. No. 122, in equity.

This cause coming on again to be heard is submitted for decree upon the demurrers filed by the several defendants to the bill of complaint as amended, and the same being argued by counsel and duly examined and understood by the court, it is considered that the said demurrers are well taken.

116 It is thereupon ordered, adjudged, and decreed by the court that the said demurrers be, and the same are hereby, sustained. It is further ordered, adjudged, and decreed that the said bill of complaint be, and the same is hereby, dismissed out of this court.

This the 29th day of May, 1897.

JOHN BRUCE, *Judge.*

Filed May 31, 1897.

J. W. DIMMICK, *Clerk.*

Order allowing appeal and waiver of service of citation.

In the circuit court of the United States for the middle district of Alabama.

Wednesday, June 23, 1897, a day of said court, the following proceedings were had:

THE UNITED STATES
vs.
EUGENE BEEBE, WM. A. HENSHAW, ET AL. } No. 122.

117 In this cause this day in open court comes the plaintiff, by its attorney, W. S. Reese, jr., and prays the court for an appeal and an order allowing the same;

Whereupon it is ordered, adjudged, and decreed that the prayer of plaintiff be allowed.

Assignments of error.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES OF AMERICA
vs.
EUGENE BEEBE ET ALS.

To the honorable the judges of said court, and to the Honorable John Bruce, one of the judges thereof:

The United States, the plaintiff in the above-entitled cause, respectfully show unto your honor that on, to wit, the 29th day of May, 1807, a decree was made and entered in said cause decreeing and adjudging that the bill filed by plaintiff in said cause be dismissed out of court.

The plaintiff having prayed an appeal, as required by law, from said decree dismissing said bill, and for a review of said decree and the other orders and decrees of the court made in this cause prior to said

118 decree, to the United States circuit court of appeals for the fifth circuit, and pray for a reversal decree, and submit the following assignments of error:

First. The circuit court erred in sustaining the demurrers of the Montgomery Land and Improvement Company, The Montgomery Light Company, The Southern Cotton Oil Company, and Abbie F. Rice, filed in the circuit court on the 5th day of May, 1890.

Second. The circuit court erred in sustaining the demurrers of the Friedman Vinegar and Cider Works, filed in said cause on the 5th day of May, 1890.

Third. The circuit court erred in sustaining the demurrer of Eugene Beebe, filed in said cause on the 9th of May, 1890.

Fourth. The circuit court erred in sustaining the demurrers of William A. Henshaw and others, filed in said cause on the 9th day of May, 1890.

Fifth. The circuit court erred in sustaining the demurrers of William A. Henshaw and others, filed in said cause on the 3rd day of March, 1891.

Sixth. The circuit court erred in sustaining the demurrers of the Montgomery Land and Improvement Company, The Montgomery Light Company, The Southern Cotton Oil Company, and Abbie F. Rice, filed in said cause on the 29th day of May, 1891.

Seventh. The circuit court erred in sustaining the demurrers of Eugene Beebe, filed in said cause on the 20th day of May, 1891.

119 Eighth. The circuit court erred in sustaining the demurrers of the Friedman Vinegar and Cider Works, filed in said cause on the 29th day of May, 1891.

Ninth. The circuit court erred in dismissing the bill of complaint in this cause, as shown by order made and entered on the 28th day of May, 1897.

And said plaintiffs pray all necessary orders and process in the consideration and revision of said decree by the circuit court of appeals for the fifth circuit.

THE UNITED STATES OF AMERICA,
By WARREN S. REESE, Jr.,
United States Attorney.

Order allowing appeal.

In the circuit court of the United States for the middle district of Alabama. In equity.

THE UNITED STATES OF AMERICA)
vs.)
EUGENE BEEBE ET ALS.)

The United States, the plaintiff in the above-entitled cause, having prayed an appeal to the circuit court of appeals for the fifth circuit from the decree of this court dismissing the bill, and the plaintiffs having complied with the law, it is ordered that said appeal be allowed.

Done at Montgomery, Alabama, this 21st day of August, 1897.

JOHN BRUCE, *Judge.*

120 Filed August 21, 1897.

J. W. DIMMICK, *Clerk.*

Citation of appeal.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Eugene Beebe, William Henshaw and others, The Montgomery Light Company, The Montgomery Land & Improvement Company, The Southern Cotton Oil Company, Abbie F. Rice, The Freidman Vinegar & Cider Works, et als.

You are hereby cited to be and appear before the United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana, within thirty days from the date hereof, pursuant to an order of appeal granted

and filed in the clerk's office of the circuit court of the United States for the middle district of Alabama, wherein the United States of America are appellant and you are appellees, to show cause, if any, why the decree rendered against the appellant as in said order of appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

121 Witness the hand of the honorable John Bruce, judge of the district court of the United States, this 21st day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

JOHN BRUCE, *Judge.*

Service of the within citation is hereby accepted and waived, and time within which transcript is to be filed at New Orleans, La., is hereby extended to October 1st, 1897.

TOMPKINS & TROY,
Attys. for Appellees.

Aug. 21st, 1897.

Certificate of clerk.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, hereby certify that the foregoing pages, numbered from one to fifty-three inclusive, contain a full, true,

122 and complete transcript of the record and proceedings in a cause lately depending in said court, wherein The United States of America was complainant and Eugene Beebe and others defendants, as the same appear of record and on file in my office as such clerk.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed at Montgomery, in said district, this the 26th day of August, A. D. 1897.

J. W. DIMMICK,
Clerk U. S. Circuit Court, Mid. Dist. of Alabama.

[Seal of the United States circuit court, middle district of Alabama.]

123 United States circuit court of appeals, fifth circuit.

NOVEMBER TERM, 1897. *Monday, May 23, 1898.*

[Extract from minutes.]

UNITED STATES
vs.
EUGENE BEEBE ET AL. } No. 639.

This cause was regularly called this day, and after argument by Mr. J. Ward Gurley for appellant, and by Mr. W. A. Gunter and Mr. H. C. Tompkins for appellees, was submitted to the court.

NOVEMBER TERM, 1898. *Tuesday, February 21, 1899.*

[Extract from minutes.]

UNITED STATES
vs.
EUGENE BEEBE ET AL. } No. 639.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the middle district of Alabama, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

124 United States circuit court of appeals, fifth circuit.

THE UNITED STATES OF AMERICA, APPELLANTS,
vs.
EUGENE BEEBE ET AL., APPELLEES. } No. 639.

Petition for appeal.

The petition of the United States of America, through W. S. Reese, jr., United States attorney for the middle district of Alabama, and J. Ward Gurley, United States attorney for the eastern district of Louisiana, under the direction of the Attorney-General of the United States, represents that in the final decree of said circuit court of appeals, rendered on the 21st day of February, 1899, there is manifest error to their injury, and therefore they respectfully pray for an order granting an appeal from said decree to the Supreme Court of the United States.

U. S. REESE, Jr.,
U. S. Attorney for Middle District of Alabama,
J. WARD GURLEY,
U. S. Attorney for the Eastern District of Louisiana,
Solicitors for Appellants.

(Endorsed:) United States circuit court of appeals, fifth circuit. Petition for appeal. Filed April 12, 1899. J. M. McKee, clerk.

125 United States circuit court of appeals, fifth circuit.

UNITED STATES OF AMERICA, APPELLANTS,
vs.
EUGENE BEEBE ET AL., APPELLEES. } No. 639.

Assignment of errors.

And now comes the United States of America, by W. S. Reese, jr., U. S. atty. for middle district of Alabama, and J. Ward Gurley, United States attorney for the eastern district of Louisiana, and solicitor for appellants, under the direction of the Attorney-General of the United States, and charges that in the decree rendered by the said circuit court

of appeals in the above-entitled cause on the 21st day of February, 1899, and in the record and proceedings in said court, there is manifest error to their injury in this, to wit:

1. The said circuit court of appeals erred in affirming the decree in said cause of the circuit court of the United States for the middle district of Alabama sustaining the demurrers filed by the appellees and dismissing the bill of complaint of the United States.

2. Said circuit court of appeals erred in not reversing the decree in said cause of the circuit court of the United States for the middle district of Alabama.

3. Said circuit court of appeals erred in not maintaining the bill filed by the United States in said cause and in not remanding the said cause to the circuit court of the United States for the middle district of Alabama for further proceedings under said bill.

126 4. Said circuit court of appeals erred in holding that "The alleged false statements in the suit brought by the United States on the bond in question were not such as to deceive a person of ordinary care."

5. Said circuit court of appeals erred in holding that said statements "could not have deceived the district attorney who represented the Government, either as to the amount due on the bond or as to the property owned by the defendants."

6. The said circuit court of appeals erred in holding that said statements "did not in any way prevent the Government from showing its cause of action and taking judgment for the full amount due if it saw fit to do so."

7. Said circuit court of appeals erred in holding in effect that the rights of the United States were affected by the acceptance by the officers of the Treasury Department of the sum of one hundred dollars, with interest, from Beebe, one of the defendants, in satisfaction of one of the judgments sought to be set aside.

8. Said circuit court of appeals erred in holding that "The facts of the case bring it under the well-known rule announced in U. S. vs. Throckmorton (98 U. S., 61) and the cases following it."

9. The said circuit court of appeals erred in not holding that the judgments against which the bill in this case is directed and which are sought to be set aside were in fact and effect illegal attempts to compromise claims and rights of, and amounts due to, the United States, and therefore void and of no effect.

10. The said circuit court of appeals erred in not holding that neither the officers of the Treasury Department nor the attorney nor any other officer cannot, directly or indirectly, compromise a claim of the United States, except in the manner and form provided by law, and that compromises of claims due to the United States have no validity, force, or effect, even though made through and by means of a judgment obtained for that purpose, unless the special requirements of the law upon

127 the subject have also been followed and complied with.

11. Said circuit court of appeals erred in not holding that the said judgments against which the bill in this case is directed, and which are sought to be set aside, were obtained by the fraud and misrepresenta-

tion of Beebe, one of the defendants, and of the personal representative of Henshaw, another of the defendants, and that said judgments are void.

12. Said circuit court of appeals erred in not holding that the said judgments against which the bill in this case is directed, and which are sought to be set aside, were in fact and effect nothing more than unauthorized, illegal, null, and void attempts to compromise the claim of the United States against the defendants Beebe and Henshaw of over twenty-eight thousand dollars for the sum of two hundred dollars.

J. WARD GURLEY,
U. S. Attorney, Eastern District of Louisiana, and Solicitor for Appellants.

W. S. REESE, Jr.,
U. S. Attorney for the Middle District of Alabama.

128 United States circuit court of appeals, fifth circuit.

THE UNITED STATES OF AMERICA, APPELLANTS,
vs.
EUGENE BEEBE ET AL., APPELLEES. } No. 639.

Additional assignment of errors.

And now comes the United States of America, by W. S. Reese, jr., United States attorney for the middle district of Alabama, and J. Ward Gurley, United States attorney for the eastern district of Louisiana, and solicitors for appellants, under the direction of the Attorney-General of the United States, and with the permission of the court first obtained, assign the following additional errors in the decree rendered by the circuit court of appeals in the above-entitled cause on the 21st day of February, 1899, and in the record and proceedings in said court therein, to wit:

13. That said circuit court of appeals erred in holding that this is a suit to set aside and annul the judgment of a court regularly entered, in a matter on which it had jurisdiction on the ground only "that the said defendants Beebe and Henshaw stated to the court that they were poor men and were without property; that nothing could be made out of them by execution, and that these statements were wholly untrue and were made to deceive the court and United States attorney, and with the intent to defraud the United States."

W. S. REESE, Jr.,
By J. W. G.
J. WARD GURLEY,
Solicitor for Appellants.

Let this additional assignment of error be filed and made part of the record. May 1, 1899.

A. P. MCCORMICK,
U. S. Circuit Judge.

(Endorsed:) Additional assignments of error. Filed May 1, 1899. J. M. McKee, clerk.

129 United States circuit court of appeals, fifth circuit.

NOVEMBER TERM, 1898, *Wednesday, April 12, 1899.*

[Extract from minutes.]

THE UNITED STATES OF AMERICA, APPELLANTS, *vs.* EUGENE BEEBE ET AL., APPELLEES. } No. 639.

Order allowing appeal.

In this case the United States, by W. S. Reese, jr., United States attorney for the middle district of Alabama, and J. Ward Gurley, United States attorney for the eastern district of Louisiana, under the direction of the Attorney-General of the United States, having made application in writing for an appeal from the final decree therein rendered on the 21st day of February, 1899, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of five thousand dollars, exclusive of costs:

It is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 12th day of May, 1899.

April 12, 1899.

A. P. McCORMICK,
Circuit Judge.

(Endorsed:) United States circuit court of appeals, fifth circuit. Order for appeal. Filed April 12th, 1899. J. M. McKee, clerk.

130 United States circuit court of appeals, fifth circuit.

NOVEMBER TERM, 1898, *filed February 21, 1899.*

THE UNITED STATES *vs.* EUGENE BEEBE ET ALS. } No. 639.

Appeal from the circuit court of the United States, middle district of Alabama.

This is an appeal from a decision of the circuit court of the United States for the middle district of Alabama, sustaining a demurrer to bill of complainant. The bill was filed by the United States of America, by its Attorney-General, against Eugene Beebe and others, alleging that the said Eugene Beebe and Ferris Henshaw were sureties on the official bond of one Francis Widmer, collector of internal revenue of the second district of Alabama, in the sum of fifty thousand dollars, conditioned that said Widmer should faithfully perform the duties of said office; that said Widmer did not faithfully perform said duties, but failed to pay over to the United States the sum of twenty-eight thousand one hundred fifty-eight dollars and fifty-six cents, and that said sum is still due, with interest from January 6th, 1874; that on the 3rd day of June, 1880, separate

suits at law were commenced in the circuit court of the United States for the middle district of Alabama against said Eugene Beebe and against William T. Hatchett, administrator of the estate of said Ferris Henshaw, for the recovery of the sums for which said Widmer, as collector, was in default; that said suits were continued until Feb'y 6th, 1885, when judgments were severally entered against said defendants for one hundred dollars each and costs, and said Beebe, on the first day of July, 1886, paid into the Treasury of the United States the sum of one hundred
131 nine dollars and eighty-five cents, the amount of the judgment and costs, but that the judgment against said Hatchett as administrator is due and unpaid.

"That said judgments were entered under the following circumstances: That said defendants came into court and stated and represented in open court, and they caused to be stated and represented for them, that said Beebe and said Ferrie Henshaw were poor men; and that said Beebe and the estate of said Ferrie Henshaw were without property out of which the said judgments could be paid and collected; that no part of said judgments could be collected by due process of law; that nothing could be made out of them, or either of them, or their estates, by execution; but that if the court would allow a jury and verdict to be entered against them for one hundred dollars, they, and each of them, would pay said judgments and costs; that no evidence or proof was or had been introduced in said causes, or either of them, and indebtedness of said Beebe and Henshaw to the United States then being twenty-eight thousand one hundred and fifty-eight dollars and fifty-six cents ($28,158.56) and interest, or other large sum; and the statements and representations aforesaid only were before the said circuit court at the time of the entry of said judgments; and no hearing or determination upon the law or the facts involved in said cases was ever had in said court; whereupon the court remarked that unless the district attorney of the United States objected, the causes might be disposed of as suggested aforesaid; said district attorney did not object; and said judgments for one hundred dollars and costs were entered in each of said causes; that said statements and representations made as aforesaid by and on behalf of and for said Beebe and said Ferrie Henshaw, and the estate of said Ferrie Henshaw, were wholly untrue, and were made to deceive said court and United States attorney, and for the purpose and with the intent to defraud the United States; that said court and the United States attorney had no authority in law to accept said statements and representations, which were not made under oath nor in the course of any judicial proceeding, and were not, and were not supported nor verified by evidence or proofs; and that said acts of said
132 court and United States attorney amounted in law and in fact to, and was, and was intended to be, a mere naked compromise of the claim and demand of the United States against said Eugene Beebe and Ferrie Henshaw, and the estate of said Ferrie Henshaw, which said court and United States attorney had no authority, but were inhibited by law to make, entertain, and consum'ate; that said court was without jurisdiction and power to determine said causes in the manner aforesaid; and that said alleged judgments for one hundred dollars and costs are null and

void, ab initio, and of no effect, and should be vacated and held for naught in this court of equity."

W. S. REESE, Jr.,
For the United States.
W. A. GUNTER,
For Henshaw Heirs.
H. C. TOMPKINS,
For Montgomery Light Co., The Montgomery Land and Improvement Co., The Southern Cotton Oil Co., Abbie F. Rice and W. R. Waller, Admx.

Before McCormick, circuit judge, and Swayne & Parlange, district judges.

SWAYNE, district judge, delivered the opinion of the court.

It is evident that this is a suit to vacate, annul, and set aside the judgment of a court regularly entered in a matter of which it had jurisdiction, with all the parties before it, on the ground that the said defendants, Beebe and Henshaw, stated to the court that "they were poor men and were without property; that nothing could be made out of them by execution, and that these statements were wholly untrue and were made to deceive the court and the United States attorney and with the intent to defraud the United States."

In United States vs. Throckmorton, 98 U. S. p. 61, Mr. Justice Miller announced the established doctrine on this subject to be "that the acts for which a court of equity will on account of fraud set aside or a judgment or decree between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered."

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It is difficult to see upon what theory the judgment in this case can be set aside. The alleged false statements in the suits brought by the United States on the bond in question were not such as to deceive a person of ordinary care. They could not have deceived the district attorney who represented the Government either as to the amount due on the bond or as to the property owned by the defendants. They did not in any way prevent the Government from showing its cause of action and taking judgment for the full amount due if it saw fit to do so. Then in about fifteen months after the entry of said judgment the Government accepted satisfaction of the same by the officers of the Treasury Department accepting the $100, with interest, from Beebe. We think the facts of this case bring it under the well-known rule announced in U. S. vs. Throckmorton, supra, and the cases following it, and that the judgment below should be affirmed.

134 United States circuit court of appeals for the fifth circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 134 pages, numbered from 0 to 133, inclusive, contain a true copy of the record and all proceedings had, including the opinion of the court in the case of The United States vs. Eugene Beebe et als., No. 639, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 8th day of May, A. D. 1899.

[SEAL.]

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

135 *Citation of appeal.*

THE UNITED STATES OF AMERICA, *Fifth judicial circuit:*

The President of the United States to Eugene Beebe, William A. Henshaw, Christina Henshaw, his wife; Cornelia H. Henshaw, widow of the late Gilbert F. Henshaw; Samuel W. Henshaw and Mary S. Henshaw, his wife; Sarah R. Buxton, William H. Baxton; George A. Henshaw, and Zuriah E. Henshaw, his wife; Annie M. Henshaw, Florian E. Henshaw, Thomas E. Henshaw, Kate G. Henshaw, Dasie B. Henshaw, children of said late Gilbert F. Henshaw, and his heirs at law; Catherine I. Ferris, Julia Mason, Frederick H. Mason, Louisa Berry, William Berry, Walter Beebe, Catherine Beebe, William Beebe, Grace Beebe, Ida Beebe, the Montgomery Light Co., the Montgomery Land & Improvement Co., the Freidman Vinegar & Cider Works; Abbie F. Rice, wife of W. P. Rice; the Southern Cotton Oil Co., Cleveland Cider Co., and William R. Waller, administrator of Eugene Beebe; or to W. A. Gunter and H. C. Tompkins, their solicitors of record, greeting:

You are hereby cited and admonished to be present and appear before the Supreme Court of the United States, at Washington, D. C., within 30 days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office in the United States circuit court of appeals for the fifth circuit in the cause wherein the United States of America were appellants and you were appellees, to show cause, if any there be, why the decree rendered against the United States of America as in said petition for appeal mentioned should not be corrected and why speedy justice should not be done in their behalf.

136 Witness the hand of the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, this 12 day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

A. P. McCORMICK,
U. S. Circuit Judge.

Service of the within citation is hereby accepted.

W. A. GUNTER,
Attorneys for Henshaw Heirs.

ALEX. TROY, surv. part. TOMPKINS & TROY,
Attorneys for Montgomery Light Company, the Montgomery Land and Improvement Company, the Southern Cotton Oil Company, Abbie F. Rice; W. R. Waller, Administrator Walter Beebe; Catherine Beebe, Wm. Beebe, Grace Beebe, & Ida Beebe.

EDWARD A. GRAHAM,
Surviving Partner of Arrington & Graham, Attys. for Freidman Vinegar & Cider Works.

APRIL 18, 1899.

137 (Indorsed:) No. 639. United States circuit court of appeals, fifth circuit. United States of America, appellants, vs. Eugene Beebe et al. Citation of appeal. Filed April 27, 1899. J. M. McKee, Clerk.

138 (Indorsement on cover:) File No. 17424. U. S. C. C. of appeals, fifth circuit. Term No. 310. The United States, appellant, vs. Eugene Beebe, William A. Henshaw, et al. Filed May 23, 1899. Office Supreme Court of U. S. Received May 11, 1899.